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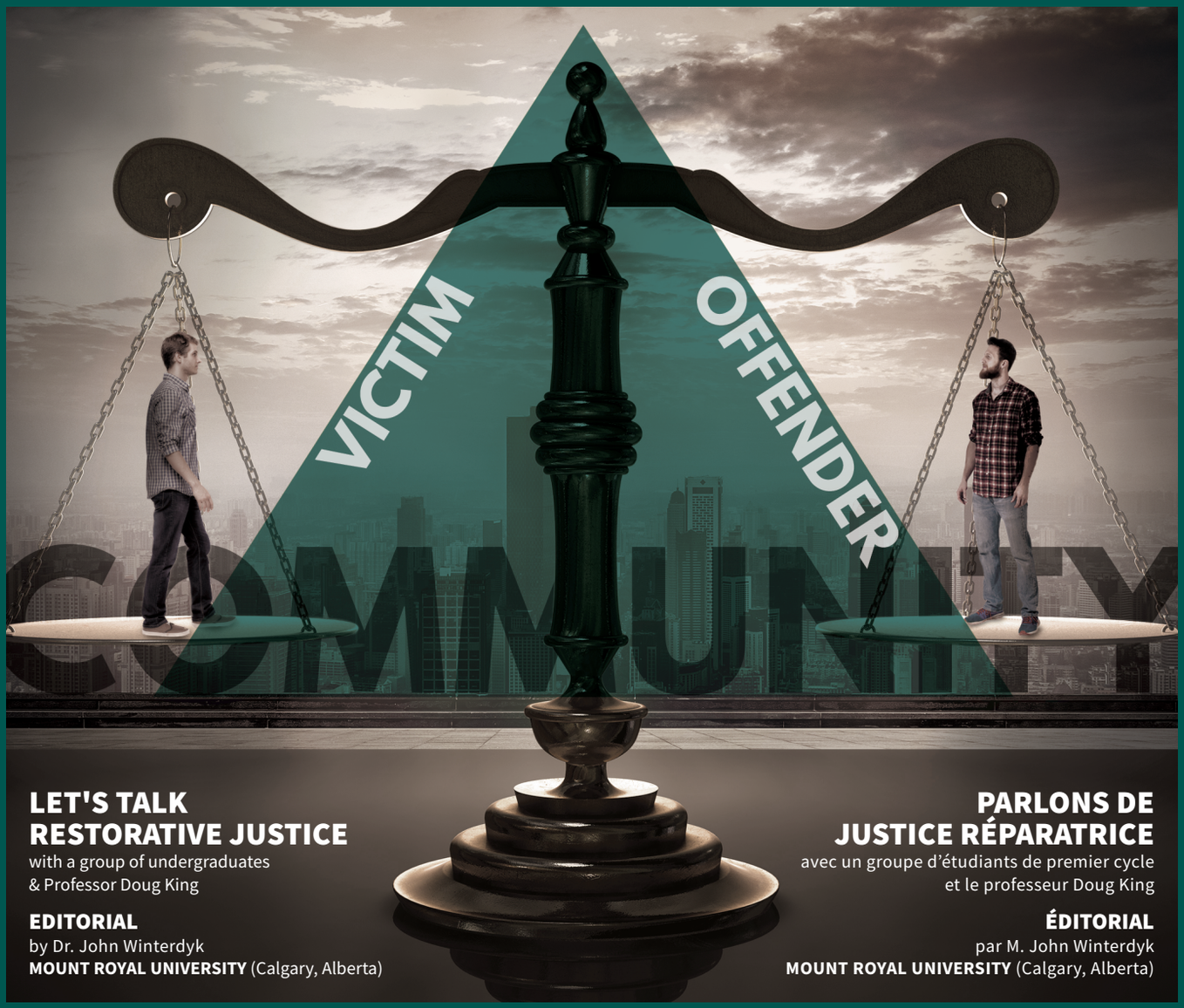
RESTORATIVE JUSTICE / JUSTICE RÉPARATRICE

CONGRESS RECAP / RÉCAPITULATION DU CONGRÈS



LET'S TALK RESTORATIVE JUSTICE
with a group of undergraduates & Professor Doug King

EDITORIAL
by Dr. John Winterdyk
MOUNT ROYAL UNIVERSITY (Calgary, Alberta)

PARLONS DE JUSTICE RÉPARATRICE
avec un groupe d'étudiants de premier cycle et le professeur Doug King

ÉDITORIAL
par M. John Winterdyk
MOUNT ROYAL UNIVERSITY (Calgary, Alberta)

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JUSTICE

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EDITORIAL

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It is both an honour and sincere pleasure to provide the Editorial for this Special Issue on Restorative Justice (RJ). This issue is the result of an undergraduate course initiative by Professor Doug King, which was arguably long overdue in the Bachelor of Arts – Criminal Justice degree at Mount Royal University (MRU).

In addition to offering a course on RJ and in discussion with Nancy Wright (editor in chief of the *Justice Report*), Doug and I thought it would be an excellent opportunity for his class to collaborate on a Special Issue based on the course theme and for some of the students to get published.

The response to this opportunity was impressive. With a thematic overview in mind, student articles were submitted for consideration. This issue represents unparalleled coverage of restorative justice within Canada as prepared by seven third and fourth-year undergraduates at MRU in Calgary, Alberta.

Selders' article draws attention to the need to subject the RJ movement to the same level of scrutiny to which we subject the conventional criminal justice system (CJS) but cautions we should not blindly accept it as a panacea to the shortcomings of the CJS. Next, Weglo offers a concise and informative overview of the impact of the RJ movement on justice for Indigenous Peoples in Canada. Of note is how the sentencing circle should be routinely integrated into current CJS practices. Then, in her article on the relationship between victim-offender mediation and RJ, Heck points out that while the model is reflective of a holistic approach to ensure a fair and justice process, it faces several challenges in the pursuit of justice.

The popular topic of conferencing within a Canadian context is covered in Barlage's article. In addition to providing an overview of the concept and its relative effectiveness – in particular with youth and relatively minor offences, Barlage argues that consideration should be given to expanding the scope and breadth of an evidence-informed RJ model. In the next article, Olyslager examines the history and principles of RJ. Included in the article is an overview of the first RJ-based program in Elmira, Ontario, as well as a summary of the RJ model as practiced by the Mauri of New Zealand. The balance of the article offers a fair comparison between RJ concepts and retributive justice, along with several instructive illustrations that serve to summarize the diversity and scope of RJ models and iterations.

In the final student article, Weinkauf and Strasser offer a helpful overview of the three main types of RJ circles - sentencing, healing, and peacemaking. They conclude by drawing some comparisons, and some of these observations can contribute to the justice movement in a holistic and integrated way. Since the papers were derived from the first offering of this course, Professor King concludes the Special Issue by offering some personal reflections on teaching an undergraduate restorative justice course. King provides a practical and insightful overview of 'lessons learned' about how one might approach or revise a course on restorative justice. ■

ÉDITORIAL

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C'est à la fois un honneur et un grand plaisir de rédiger l'éditorial de ce numéro spécial sur la justice réparatrice. Le présent numéro est le résultat d'une initiative lancée par le professeur Doug King visant à mettre en place un cours de premier cycle, certainement attendu depuis longtemps, au programme de baccalauréat ès arts — justice pénale, à l'Université Mount Royal.

En plus d'offrir un cours sur la justice réparatrice et le dialogue, Nancy Wright (rédactrice en chef de la revue *Actualités justice*), Doug et moi avons pensé que ce serait une excellente occasion pour sa classe de collaborer à un numéro spécial axé sur le thème du cours, et que les articles de certains étudiants soient publiés.

La réponse à cette occasion a été impressionnante. En ayant en tête un document thématique, les étudiants ont présenté des articles. Le présent numéro représente une couverture inégalée de la justice réparatrice au Canada, préparée par sept étudiants de troisième et de quatrième année du baccalauréat de Mount Royal University, en Alberta.

L'article de M^me^ Selders attire l'attention sur la nécessité de soumettre le mouvement de justice réparatrice au même examen rigoureux auquel nous soumettons le système de justice pénale classique. Mais, il nous met en garde de ne pas l'accepter aveuglément comme un remède aux failles du système de justice pénale. Ensuite, M^me^ Weglo offre un aperçu révélateur sur les répercussions du mouvement de justice réparatrice sur les peuples autochtones au Canada. Notons la manière dont le cercle de détermination de la peine devrait être systématiquement intégré aux pratiques actuelles du système de justice pénale. Puis, dans son article sur la relation entre la médiation entre victime et le délinquant et la justice réparatrice, M^me^ Heck précise que même si le modèle est représentatif d'une approche holistique pour garantir un processus juste et équitable, il doit surmonter de nombreux obstacles dans la poursuite de la justice.

Le sujet populaire des conférences dans un contexte canadien est abordé dans l'article de M^me^ Barlage. En plus de donner un aperçu du concept et de son efficacité relative — en particulier auprès des jeunes et dans le cas d'infractions relativement mineures, M^me^ Barlage avance qu'il faudrait songer à élargir la portée d'un modèle de justice réparatrice fondé sur des données probantes.

Dans l'article suivant, M^me^ Olyslager examine l'historique et les principes de la justice réparatrice. Elle présente notamment un aperçu du premier programme fondé sur la justice réparatrice à Elmira, en Ontario, ainsi qu'un résumé du modèle de justice réparatrice utilisé par le peuple maori en Nouvelle-Zélande. Le reste de l'article présente une comparaison juste entre les concepts de justice réparatrice et de justice rétributive, ainsi que plusieurs illustrations enrichissantes qui servent à résumer la diversité et la portée des modèles et des itérations de justice réparatrice.

Dans le dernier article d'étudiants, M. Weinkauf et M^me^ Strasser présentent un aperçu utile des trois principaux types de cercles de justice réparatrice: les cercles de détermination de la peine, les cercles de guérison et les cercles de conciliation. Ils terminent en établissant des comparaisons, et certaines de ces observations peuvent contribuer au mouvement de justice d'une manière holistique et intégrée.

Puisque les articles découlent de la première mouture de ce cours, le professeur King termine le numéro spécial en présentant des réflexions personnelles sur l'enseignement d'un cours de premier cycle sur la justice réparatrice. Il présente un aperçu pratique et instructif des « leçons tirées » sur la manière d'aborder ou de revoir un cours sur la justice réparatrice. ■

VICTIM
OFFENDER
COMMUNITY

Current Debates and Controversies Surrounding Restorative Justice

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In many cultures, restorative justice is becoming more widely understood and accepted, especially in academia, due to the increased research and literature on the topic. However, many express skepticism and doubt over the proposition of restorative justice. An outline of some of the root sentiments and arguments informing the debates and controversies around restorative justice, such as, 'it is an easy way out'; 'it can't be implemented in instances of violent crimes'; or, 'restorative justice practices produce no positive outcomes'. Until such reservations are addressed formally and sufficiently, implementation of RJ within traditional justice systems is likely to meet with varying degrees of resistance.

INTRODUCTION

Although restorative justice is practiced more widely than many people are likely aware, the term "restorative justice" is yet to become a subject of popular discussion. Like the thought of rubbing cotton on teeth or nails on a blackboard, the term "restorative justice" makes many uncomfortable and is often connotated with various negative, moral assumptions underlying the offender-victim relationship. Restorative justice (RJ) is no stranger to skepticism and the question at point here is, *what about restorative justice gives people reservations and feelings of reluctance?*

A review of the literature demonstrates no shortage of opinions and claims about the challenges, weaknesses, and/or other controversies and debates surrounding restorative justice. While chronicling all the critiques and challenges is beyond the scope of this article, several of the more common apprehensions will be reviewed: (1) that offenders are being 'let off easy'; (2) that restorative justice cannot 'remedy the impacts' of violent crimes; and (3) that restorative justice practices have the potential to 're-victimize' the very individuals harmed by the original offense.

IS RJ AN EASY WAY OUT?

It cannot be denied that restorative justice represents an opportunity for the offender, yet the term 'opportunity' becomes somewhat ambiguous in the restorative justice context. For proponents of RJ, 'opportunities' mean offenders are given the chance to repair the harm done, reconcile relationships, and prove to the community that they fully comprehend the impacts of their actions and are remorseful. Since such 'opportunities' involve offering the offender a divergence out of the traditional criminal justice process, some believe that offenders can use RJ as a ruse - to escape justice by making an insincere apology and receiving a 'slap on the hand'.

In Australia and New Zealand, the celebrated criminologist Kathleen Daly (2006) has argued that sincere apologies are difficult to come by (p. 139). It's believed that victims want more than apologies; they want to see the offender punished, because this validates their victimization in the

eyes of society (Daly, 2006, p. 139). Coincident to this notion, there is an idea that punishment is engrained in the Western collective subconscious as the only means by which an offender can be deterred from recidivism. Like Daly, Miller (2009) posits that punishment appears desirable to the public because it "protect[s] social cohesion and reaffirm[s] collective attitudes toward[s] deviant activit[ies]" (p. 20). When the majority of people accept punitiveness as central to combatting crime, community-based restorative justice programs are less likely to be accepted (Miller, 2009, p. 20). The difficulty in gauging sincerity makes many wary of adopting a more restorative-based model of justice.

Arlène Gaudreault, who has served as President of Quebec's *Association québécoise plaidoyer-victimes* since 1988, questions whether constructive dialogue between the victim and offender is even desirable (Gaudreault, 2005, para. 17). Some argue it reflects a utopian ideal that it is easy to remediate the victim-offender relationship. Others ask why anyone who harmed someone would genuinely want to apologize to that person for the harm they caused, seek forgiveness, and express remorse. Some contend that restorative justice ends up expediting the natural process of forming accountability and this is subsequently ingenuine.

REINTEGRATIVE SHAMING AND RJ

In response to such criticisms, proponents of restorative justice argue that the RJ process is in no way soft on crime. Many believe greater guilt is experienced by summoning the courage to sit across from someone you have directly victimized, look them dead in the eye, and offer an apology (CBC News, 19 Nov. 2015, para. 4). This notion correlates with an RJ theory known as reintegrative shaming.

In his book *Crime, shame and reintegration* (1989), the Australian criminologist John Braithwaite, discusses his concept of "reintegrative shaming" as a means of achieving social control (p. 152). The idea is that the offender is separated from the crime itself, thus being seen as a good person who did a bad thing ("Reintegrative Shaming", 2014, p. 592). The simplest explanation of reintegrative shaming theory would be to describe it as a dynamic in which the offender is reintegrated into the community made up of virtuous people who offer forgiveness and sympathy. You could say it 'disarms' the offender, by casting them as a valued member of society. Although the community recognizes the offender's actions as harmful, Braithwaite's theory suggests that because the offender is not rejected by his community, the offender, in turn, acknowledges his actions and takes ownership (Braithwaite, 1989, p. 102). The ensuing shame becomes a detriment to the offender's self-esteem and therefore acts as a deterrent. Braithwaite's theory contributes largely to the positive dialogue surrounding restorative justice and is often sourced by those opposed to the assumption that restorative justice is 'soft on crime'.

IS RJ LIMITED IN THE CONTEXT OF VIOLENT CRIME?

Some advocates of restorative justice even contend that its effectiveness is not without limitations. There is an important ongoing debate about the ability of restorative justice to mediate violent crime. Violent crimes typically engender a considerable amount of trauma in the victim. Triggering the victim is contingent on the resurfacing of this trauma, which is likely to be provoked when in direct contact with the person who originally inflicted this pain. For solely this reason, many people do not believe that restorative justice could be the main practice of criminal justice in a society.

Some of the more vocal advocates of restorative justice practices view its future with great confidence – that it will come to play a predominate role in our criminal justice system. This arguably makes those accustomed to a more punishment-focused system feel uncomfortable and even less open to considering RJ practices. While we're aware that some individuals and organizations are increasingly embracing certain RJ practices, it would nonetheless be a challenge to win support for a criminal justice system founded on RJ practices alone at this point in time.

One rationale for this opinion is that most victims of violent crime don't even want to endure a process of this nature to begin with (Gaudreault, 2005, para. 23). In turn, the fear is, that if we do start to see restorative justice overshadowing our conventional criminal justice system the process will no longer be a voluntary one for victims. For example, it is feared that if restorative justice becomes standardized into precedent, victims of violent crimes may be pressured to display attitudes of forgiveness or

exemplify the will to heal. They may be nervous to come off as "vindictive" or "trapped in anger" (Ruthless World, 2013, para. 26).

Influential restorative justice critics tend in particular to represent or advocate for marginalized groups such as women, Indigenous peoples, persons of colour, and youth. For example, some feminist critics of restorative justice voice concerns over its potential for re-victimization – that the conferencing dynamic might allow the dialogue and stories offered by the victim to come into disrepute or, worse, be challenged by the offender in attendance (Curtis-Fawley & Daly, 2005, p. 607).

This is why the UK penal theorist Barbara Hudson (1998) emphasized we must not underestimate the power dynamics in violent crimes targeting marginalized groups (p. 247). Due to the great emphasis on the victim-offender relationship, restorative justice might "reproduce and reinforce the imbalance of power of the crime relationship" (Curtis-Fawley & Daly, 2005, p. 607). Differently, some do assert that restorative justice can work in the context of violent crime.

"VICTIMS' VOICES HEARD"

It's often suggested that opening a dialogue between the victim and the offender is beneficial to both parties. One of the main purposes of restorative justice is to give victims an opportunity to share their story and expel their own internalizations of the harm caused to them. If this is the case, it could be inferred that the more violent the crime, the greater impact on the victim and, thus, the greater impact this has on an offender receiving the victim's perspective. Thus, the meaning of the restorative justice process to the offender can be said to increase with the severity of the crime.

For example, in his book entitled *After the Crime: The Power of Restorative Justice Dialogues between Victims and Violent Offenders*, Miller (2011) discusses the success for both victim and offender (p. 168) of the *Victims' Voices Heard Program* (VVH) in which victims of violent crimes have the opportunity to meet their offenders in a restorative justice setting (p. 14). For the victims, it was an opportunity by which they could receive answers to the questions they had been pondering for so long, to face their offender and describe all the ways in which the offense had harmed them, and many victims also expressed a need to forgive their offender (Miller, 2011, p. 165). On the other hand, although many offenders were apprehensive, they had been eager to show remorse and apologize even prior to hearing about the VVH program (Miller, 2011, p. 169).

Furthermore, a Public Safety Canada study (2005) recorded satisfaction with restorative justice for one group of victims of serious crime that met with their offenders. The satisfaction was then compared to that of a control group comprised of other victims and offenders also related to serious crime incidents (para. 5). It was found that while 70% of the victims in this study were victims of crimes against the person, the majority were highly satisfied with restorative justice methods, especially in comparison to those who were subject to the conventional (adversarial) criminal justice approach. These examples indicate that, given an appropriate context, restorative justice practices can extend to violent crime.

IS RJ ALWAYS A POSITIVE EXPERIENCE IN THE EYES OF THE VICTIM?

A smaller yet important controversy associated with restorative justice pertains to the concern that it may not comfort or support the victim as intended. Restorative justice requires that the victim place themselves in an extremely precarious position and thus risk leaving a restorative justice conference feeling dissatisfied or further harmed. This can be compared to traditional methods of criminal justice which offer victims a backseat to the process so that they don't have to become totally immersed if they don't want to.

In many instances, victims have expressed disappointment with the process for a magnitude of reasons including lack of authority to ensure the completion of outcomes, perceptions of inadequate punishment, feelings of displeasure toward the mediator, feeling insufficiently uninformed prior to starting the process, feeling pressured to participate, and/or feeling revictimized during the process (Choi, Bazemore, and Gilbert, 2011, p. 37). Some victims have expressed feeling that the offender wasn't genuine in displaying remorse or apologizing (Evans, McDonald, & Gill, n.d., para. 8).

NO HARM MEANT WITHIN THE RJ PROCESS

In response to this, restorative justice purists might argue that further harm is never to be generated by

RJ practices. In instances where new harm is being caused, the victim should remove themselves from the mediation. The onus is also on the mediator to possess the competence and training to properly read the room and interpret the dynamics. Ultimately, the mediator is responsible for making sure the process causes no further harm.

CONCLUSION

All of the aforementioned arguments associated with both sides of the debate are important because they offer critical considerations in refining the restorative justice process. It was not the purpose of this paper to resolve these controversies and debates, simply to highlight the strong arguments on both sides of the discussion. Whether or not restorative justice gains traction will likely be tied to the ability of its advocates to fully address the concerns as well as celebrate the successes of RJ. ■

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RÉSUMÉ

Current Debates and Controversies Surrounding Restorative Justice

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Dans de nombreuses cultures, la justice réparatrice est de plus en plus largement comprise et acceptée, en particulier dans le milieu universitaire, grâce à un accroissement de la recherche et de la littérature sur le sujet. Cependant, beaucoup se montrent sceptiques ou expriment des doutes à l'égard de la proposition de justice réparatrice. Voici certaines opinions et raisons fondamentales guidant les débats et les controverses entourant la justice réparatrice : « c'est une voie facile »; « elle ne peut être utilisée dans les cas de crimes violents » ou « les méthodes de justice réparatrice ne donnent aucun résultat positif ». Tant que ces réserves ne seront pas abordées de manière officielle et adéquate, l'intégration de la justice réparatrice aux systèmes de justice traditionnels se heurtera probablement à divers degrés de résistance.

Indigenous Restorative Justice: Practices, Laws, and Healing

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Indigenous understandings of harm, healing and justice are one of the principal sources of contemporary restorative justice practices. While mainstream criminal justice focuses on offender blameworthiness and appropriate punishment, traditional Indigenous approaches focus on the shared harm caused by an individual's actions and the shared responsibility in healing the social causes and consequences of the harm. Restorative justice approaches are influencing, albeit slowly, the mainstream Canadian criminal justice system. Of particular note is the development and success of Indigenous circle sentences initiated in the Yukon in 1992.

OVERVIEW OF INDIGENOUS JUSTICE

A main focus of most traditional Indigenous cultures and communities is a notion of inclusivity that makes each individual a unique but interrelated part of a community (Hand, Hankes & House, 2012, p. 450). Each member is considered to have a specific role to play in the community, and no role is more important than another (p. 450). Indigenous culture continues to revolve around relationships with others and the bonds that each individual in the community shares with one another. When an unjust act occurs, the responsibility is on the collective community, rather than solely the individual offender, to seek restitution and repair of the harm caused (Baskin, 2002, p.133).

WESTERN PUNITIVE SYSTEM VS INDIGENOUS RESTORATIVE JUSTICE

There are important differences between the traditional Western (i.e., European-based) justice system's approach of punishing criminals and a restorative approach once practiced by many traditional Indigenous cultures and increasingly influencing conventional retributive justice systems in Canada as elsewhere. A major aim of the Indigenous restorative process is to instill harmony and balance within the community for both the offender and the victim (Hand, Hankes & House, 2012, p. 452). By comparison, our mainstream criminal justice system is strongly focused on the blameworthiness of the individual offender. This focus results only indirectly in the involvement of the direct victim(s) or other individuals who may also have been affected by the crime, which inhibits their healing or restoration from the harm done (Baskin, 2002, p. 133).

TRADITIONALLY PUNITIVE WESTERN JUSTICE SYSTEMS

Many of the common complaints about traditional 'Western' criminal justice systems concern the lack of victim and community involvement in the process. This lack of involvement precludes the healing process for the individual and collective social harm that all parties experience when a crime is committed. (Baskin, 2002, p. 133). The assumption within our punitive system is that punishing offenders will give the public and the victim satisfaction that justice was served and that it will 'rehabilitate' offenders. The severity of the punishment is determined by sentencing options, such as a fine, incarceration or probation (Hand, Hankes & House, 2012, p. 452).

The punitive nature of criminal justice has resulted in a long-standing and increasing overrepresentation of Indigenous persons within

the Canadian justice system. Indigenous people represent approximately 28% of all individuals in federal custody but only comprise about 4% of the Canadian population (Goff, 2019, p. 374). Overrepresentation of a particular group is a widely accepted measure of discrimination. The overrepresentation of Indigenous people in custody and as victims of crime is greater within certain provinces and territories, such as Saskatchewan, Manitoba, Alberta, Yukon, Nunavut and the Northwest Territories.

It should be recognized that attempts have been made within our current justice system to address the overrepresentation of Indigenous persons. For example, there is a requirement for judges to consider alternatives to incarceration for Aboriginal individuals per section 718.2(e) of the Criminal Code of Canada. The Supreme Court of Canada in *R. v. Gladue* (1992) resulted in a requirement for judges to take judicial notice during the sentencing phase of a criminal trial of the long-term impact that residential schools and other forms of systemic racism and social exclusion have had on an Indigenous offender. Anishinaabe criminal lawyer Promise Holmes Skinner says that other factors prevent the Gladue rules from working and calls for the application of "Gladue factors beginning at bail hearings, to help curb the number of Indigenous people pleading guilty to crimes they did not commit" (Deer, 28 Feb. 2019). Correctional Services of Canada has also instituted healing lodges that work to reconnect Indigenous offenders to their cultural heritage in an effort to break the cycle of recidivism that plagues many Indigenous offenders.

In the face of these and other changes to the current criminal justice system, however, the overrepresentation of Indigenous federal offenders increased by over 40% between 2009 and 2018 (Goff, 2020, p. 374). Perhaps it is time to consider other restorative justice options for Indigenous offenders in Canada.

INDIGENOUS RESTORATIVE JUSTICE

The focus of the restorative justice paradigm is healing the harm experienced by everyone affected by a crime: victim, offender, and community (Beitzel & Castle, 2013, p. 45). The ideas behind this holistic, restorative approach is to foster reconciliation, reassurance, reintegration, and reparation of the harm done. As professors Beitzel and Castle (2013), Madison University (USA), have pointed out "justice is not achieved after the criminal trial but is built during and through the restorative process itself" (p. 47). Incarceration alone does not necessarily allow the offender to accept responsibility or accountability for their actions, and it leaves the victims of the crime, including members of the community indirectly affected by the crime, to live in frustration and heartache for the duration of the sentencing (Baskin, 2002, p. 134).

Restorative justice is not a mere diversion from punishment by avoiding incarceration or an 'easy way out' of taking responsibility for a crime committed. In essence, "Diversion programs lean toward reform of the criminal justice system, whereas Indigenous restorative justice seeks to reinvent the criminal justice system" (Hewitt, 2016, 317). Restorative justice models "are based on Indigenous legal orders rather than on the Canadian criminal justice model" (pp. 316-317). It is believed that allowing an offender to take a restorative justice approach to their sentencing rather than serving time in jail or prison will foster an understanding of the harm they have caused to individuals and making peace with that will help them successfully reintegrate into the community.

In most cases, experiencing a restorative justice program can be much more difficult than time spent in prison because of the accountability factors the offender has to own in front of the victim and community members. It takes a tremendous amount of courage and bravery to stand before the community and listen to victim(s). It creates a feeling of great shame and remorse for the offender; however, these feelings are all part of the healing process and will benefit the offender in the future.

HOLISTIC HEALING AND ACCOUNTABILITY

Traditional Indigenous restorative justice practices involved many people within the community, not just victim and offender. The individuals involved in such holistic healing may have included family members of the victim and the offender, support for the victim, support for the offender, and other members of the community (Baskin, 2002, p. 135). In terms of rehabilitation, the purpose of the opportunity to include such individuals from the community is to afford the offender the chance to accept responsibility, take accountability, and

realize that the consequences of his acts have - either indirectly or directly - affected many people. Once genuine accountability has been extended to the victim and accepted, the offender is able to voice a sincere apology towards everyone harmed by the act and is given options as to how they can make amends through future community involvement (p. 135).

The greatest benefit of holistic healing is the powerful, positive outcomes experienced by victim and offender alike; the emotions that can emerge from the circles allows each individual to attain a sense of closure (Baskin, 2002, p. 135). While participation is voluntary, victims are also given a voice to express their feelings about the offence and how it has affected their lives personally. This is quite different from the punitive system, in which victims are hardly involved (p. 135) or forced to appear. Offenders are given the opportunity to directly appreciate the harm caused by their actions and to express remorse. The community has the opportunity to take an active role in supporting the healing of both victim and offender.

There is no one single Indigenous restorative justice practice. Those used in Canada can currently include sentencing circles, peacemaking circles, circles of accountability, and healing lodges, among others. As an overview of all the Indigenous restorative practices is beyond the scope of this article, I have chosen to focus on how traditional Indigenous "healing circles" were implemented in the Canadian CJS in the early 1990s as "sentencing circles" (Goldbach, 2016).

USE OF SENTENCING CIRCLES WITHIN THE CANADIAN CJS

The origins of sentencing circles within Canada's criminal justice system can be traced back to a 1992 criminal case in the Yukon. In advance of sentencing a repeat offender – Philip Moses – on new convictions related to theft, carrying a weapon and probation violations, Judge Barry Stuart concluded that traditional criminal sentencing practices had not been an effective deterrent to recidivism for Moses (Hass-Wisecup & Saxon, 2018, p. 143). Judge Stuart thus requested a meeting with the offender, his defense counsel, family members, probation officer, First Nation community members and local police officials (p. 144). Mirroring practices in a traditional Indigenous talking circle, the participants were invited to speak to the underlying causes of Moses' offending and to offer recommendations on how community involvement in a restorative process might end Moses' cycle of (re)offending. Judge Stuart's sentence was informed by the circle's recommendations (p.144) (See Weinkauf & Strasser in this issue).

PURPOSE OF SENTENCING CIRCLES

The main idea behind sentencing circles is the idea of equality and that all participants have a voice to be heard (Yuzicapi, 2013, p. 31). The main purpose of sentencing circles "is about restoring control, healing, restoring harmony, relationships and balance. It is about taking responsibility and making reparation" (Yuzicapi, 2013, p. 32). The outcomes of the circle process affect every single individual who participated and the decision regarding the offender represents the consensus formed within the circle (p. 32).

REQUIREMENTS BEFORE CONDUCTING A SENTENCING CIRCLE

A few requirements must be met before a sentencing circle is mandated. A sentencing circle cannot be conducted without the agreement of the offender, Crown and victim. The victim does not have to participate during the circle but can delegate one of their support people to speak on their behalf. The offender must admit their guilt to be eligible for a sentencing circle as a means of ensuring they take responsibility for their role in the harm caused; otherwise, more damaging consequences to the victim and community may ensue. The offender must also be committed to embracing the restorative outcomes of the circle. All circle participants, including family, community and law enforcement members, should also be involved in the provision of further support needed by the offender to reconnect back into the community (Yuzicapi, 2013, p. 32).

TRADITIONAL CEREMONY RITUALS

Traditional ceremonies and rituals evoking age-old beliefs about humanity are embedded in Indigenous sentencing circles (Yuzicapi, 2013, p. 38). These circles can be performed to confront and resolve conflict, with members of any cultural identity. Sentencing circles are effective in resolving crime, as well as invoking shame onto the offender to foster understanding of the harm that was caused by their actions. A circle generally

Artwork by EMILY WEGLO

begins with a prayer and the offering of tobacco by an Elder. After this, one of the participants will light sweetgrass and pass it around to allow the smudging to cleanse the body and spirit of all before the ceremony begins. Finally, each member smokes from a sacred pipe provided by either the victim or the offender's family. This sacred pipe will move around the circle four separate times for each individual to use, creating a sense of collectivity and inclusivity. The circle then ends with a closing prayer by an Elder (Yuzicapi, 2013, p. 38).

If someone does not feel comfortable participating in the circle, they do not have to – it is a voluntary process. Healing oneself as an individual is the first step in restoring the relationships that have been damaged (Yuzicapi, 2013, p. 33) through the offense. Sentencing circles are not meant to re-victimize any of the participants but are intended to repair, restore, and reintegrate. There is no time limit on this process, nor shame for the offender needing individual help before attempting to repair the relationships within the community and neither for any form of support required by the victim.

HOW ARE SENTENCING CIRCLES ORGANIZED?

The following depiction is through the perspective of an Okanese First Nation Elder and knowledge keeper, therefore, this structure of sentencing circles may vary with other Indigenous Elders leading the circle (Yuzicapi, 2013, p. 36). An Indigenous sentencing circle takes place in four separate rounds (p. 38). All circle participants are seated on the floor rather than in chairs because it is believed that sitting on furniture disconnects the person's body from the circle; therefore, by sitting on the ground, everyone will be connected as one by the circle (p. 37).

The first round of the Indigenous-derived sentencing circle is when the victim and offender voice their respective opinions about what happened (Yuzicapi, 2013, p.37). If neither the victim or offender feel comfortable starting the discussion, the facilitator can assist in beginning the circle with words of encouragement. When the victim and offender have voiced their opinions, the facilitator will then help guide the conversation towards beginning the second round of the circle which allows additional individuals to contribute to the conversation. This second round allows the authority figures within the community to speak, such as police officers and lawyers. The third round of the sentencing-circle process allows the other members who are within the circle to enter the discussion and voice their opinion, give suggestions, or make statements about the offence.

Finally, the fourth round allows the judge to summarize everything that was said within the circle and make an appropriate sentence that responds to the concerns and opinions of the individuals who spoke (p. 38). The sentencing circle is then concluded with one of the Elders saying prayer followed by a feast hosted by the offender's family and community for all who participated to enjoy (p. 39).

OUTCOME OF SENTENCING CIRCLES

Within Canadian law, sentencing circles work in conjunction with the criminal court system (Hass-Wisecup & Saxon, 2018, p. 145) and constitute just one example of how traditional Indigenous approaches to crime are influencing conventional justice systems. If the circle does not preclude sentencing for the offender, one of the outcomes is the formulation of a sentencing recommendation for the judge to consider during the sentencing phase of a criminal trial. Informed by the circle's recommendation, the judge can determine a sentence that takes into account the willingness of the offender and the community to share responsibility in a restorative process aimed at repairing the harm caused by the offender's actions. ■

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RÉSUMÉ

Indigenous Restorative Justice: Practices, Laws, and Healing

EMILY (WEGLO) RIDLEY
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Les conceptions autochtones de préjudices, de guérison et de justice sont l'une des principales sources des méthodes contemporaines de justice réparatrice. La justice pénale traditionnelle se concentre sur la culpabilité du contrevenant et la punition appropriée, mais les approches autochtones traditionnelles sont axées sur le préjudice commun causé par les actions d'une personne et la responsabilité partagée dans la réparation des causes sociales et des conséquences du tort causé. Les approches de justice réparatrice influencent, quoique lentement, le système de justice pénale traditionnel du Canada. Il importe de souligner la conception du cercle autochtone de détermination de la peine, mise en place au Yukon en 1992.

JUSTICE

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35.3

CCJA INTERVIEW WITH/ ENTREVUE ACJP AVEC
DR. JON FRIEL
(RPSYCH, AB)

THEME: Jon advocates for the establishment of a Canada-wide "documents" clearing house concerning the domain of all human services' best practices being delivered to incarcerated youth and youth in care.

35.4

THEME:
Parole and Conditional Release
Libération conditionnelle et Mise en liberté sous condition

Please contact the Editor (Nancy Wright) at ccjapubsacjp@gmail.com

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Mediation: A Restorative Justice Approach

CHALSEA HECK
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Victim-offender mediation is a restorative justice approach increasingly popular as an alternative method of obtaining justice in contemporary criminal justice systems. This article defines restorative justice, illustrates the victim-offender mediation process, examines programs offered in Canada, and explores how victim-offender mediation can be utilized in existing justice systems. Heck uses a case study to demonstrate victim-offender mediation, where the offender had participated in a religiously motivated hate crime against the Muslim community on September 11th, 2001. The author also addresses challenges in the Canadian criminal justice system and how victim-offender mediation aids are increasingly being used in the pursuit of justice.

INTRODUCTION

Restorative justice initiatives are being used in various criminal justice systems around the globe. The United States, Australia, United Kingdom, New Zealand, and Canada each have a variety of programs focusing on victim-offender mediation, family group conferencing, sentencing circles, and peacemaking circles. Many scholars have dedicated time to analyzing and researching how these practices benefit victims, offenders, and legal systems. Dr. Mark Walters, a Professor of Criminal Law and Criminology at the University of Sussex and co-Director of the International Network for Hate Studies (INHS) recognizes restorative justice as a bona fide "set of practices" or "theory of justice", as argued most notably by academics such as Albert Dzur (U.S.) and John Braithwaite (New Zealand/ Australia) (as cited in Walters, 2014, p.34).

Others suggest that restorative justice initiatives act as extensions of an already functioning, 'retributive' criminal justice system that some say is in need a complete overhaul (Walters, 2014, pp. 33-34). Canadian criminologists Yvon Dandurand and Curt Griffiths, who prepared the *Handbook on Restorative Justice Programmes* for the United Nations Office on Drugs and Crime (UNODC, 2006), argue that "Restorative justice programmes can be used to reduce the burden on the criminal justice system, to divert cases out of the system and to provide the system with a range of constructive sanctions" (2006, p. 2).

Concerns over increasing crime, social disorder, and the notion of receiving justice are commonly highlighted in Canadian society. We often hear our justice system has let someone down, that punishments are not harsh enough, or there is not enough 'justice' for victims. According to the UNODC report, dissatisfaction and frustration with the formal justice system or a resurging interest in preserving and strengthening customary law and traditional justice practices have led to calls [in many countries] for alternative responses to crime and social disorder" (Dandurand & Griffiths, 2006, p. 1). Restorative justice initiatives such as victim-offender mediation are examples of such alternative measures, which are progressively and positively influencing many criminal justice systems around the globe.

AN OVERVIEW OF VICTIM-OFFENDER MEDIATION & PROCEDURES

Mediation is known for being one of the earliest restorative justice processes. It is where victims and offenders participate in "various kinds of [mediated]

dialogue" (Dandurand & Griffiths, 2006, p. 67) to establish the responsibilities of the offender; repair harms to the victim and find solutions that take the victim's needs into consideration (p. 17). Mediation had initially been used to resolve issues related to labour laws, starting in the mid 1960's. As the approach became recognized as a valid method of conflict resolution, however, communities and neighborhoods adopted the approach for dealing with non-labour disputes:

> "[A]s a result of its acceptance in this field, mediation was tried (and usually accepted) in an increasingly broad range of nonlabour disputes: divorce, environmental, housing, institutional (including prisons, schools, and hospitals), small-claims, personal injury and insurance, and general business disputes, as well as claims involving governmental agencies (Singer, 1990)" (Bush & Folger, 2013, p.96).

Once the use of mediation gained validity in the courts, the number of mediation services put in place for such purposes increased over the 1970's and the 1980's (p. 96).

RJ AS A PRACTICE OF CONTEMPORARY JUSTICE SYSTEMS FIRST EMERGED IN ELMIRA, ONTARIO

It is commonly known that official victim-offender mediation for criminal justice originated in Ontario with what is now called either the "Elmira Case" or the "Kitchener Experiment". In 1974, two young persons pleaded guilty to over 20 different criminal charges related to property damage and vandalism following a night of drinking (Hass-Wisecup & Saxon, 2018, pp.83-84). In advance of sentencing, the judge asked probation-parole officer Mark Yantzi to prepare a pre-sentencing report. Working with the local Mennonite Central Committee (MCC), Yantzi (member MCC and the Mennonite church) and Dave Worth (MCC representative and prison-support worker) thus proposed a non-traditional sentence along with a term of probation. Rather than being sent to jail, the two offenders would participate in a mediated face-to-face meeting with their victims. The victims were encouraged to express their anger and hurt after which the offenders offered a formal apology for their actions and entered into agreements on how to make things right (p. 84). Now called the "Kitchener Experiment", this case marks the beginning of Canada's Victim Offender Reconciliation Project, or VORP.

While the Elmira case was the first official application of RJ in alternative sentencing, the roots of RJ go deeper. In his *Little Book of Restorative Justice* (2002), a key reference work for RJ, Howard Zehr - the oft-cited father/founder of modern RJ - posits it not as "a new or North American development"; but rather one of which "the precedents and roots… [are] much wider and deeper than [the] Mennonite-led initiatives of the 1970s" and that the RJ movement "owes a special debt to the Native people of North America and New Zealand… and to a variety of cultural and religious traditions… as old as human history [and as deep as the world community]".

It is clear that restorative justice initiatives such as mediation focus heavily on the needs of those who are harmed. Mediation processes allow victims to be heard in a safe environment, promote communication between parties, while also giving offenders the opportunity to better understand and take responsibility for their actions and addressing reparations for the victim. These processes may empower victims as it gives them back power that was lost due to the harm that was caused (Bazemore & Umbreit, 2001, p. 2).

Referrals to mediation programs can be made by probation officers, judges, lawyers, and victim service agencies. In some cases, mediation is a method of diversion that may afford an exemption from prosecution. For cases that cannot be diverted out of the criminal justice system, victim offender mediation can be used post-charge. A post-charge referral requires a guilty plea by the offender to go forward with the mediation process as a sentencing condition (Bazemore & Umbreit, 2001, p. 2).

MEDIATION PROGRAMS IN CANADA

Restorative justice programs in Canada are either federal or provincial/territorial government initiatives. According to the Department of Justice (2017), there are numerous Provincial programs and four main programs available across Canada which include: Peace of the Circle (in Vancouver), Restorative Opportunities (in Ottawa), The Sawbonna Project for Living Justice (focused on victims and located in Toronto), and The Canadian Families and Corrections Network (in Kingston).

The Restorative Opportunities program is the Correctional Services of Canada (CSC) victim-mediation program that gives those who have been harmed by a criminal act the chance to engage in (mediated) open dialogue with the offender (Government of Canada, 2017). As restorative justice initiatives in Canada are on a voluntary basis for all parties, the offender also must agree to participate. CSC employs "community-based mediators specialized in working with people affected by crime" and the process is not limited to "face-to-face meetings" but can include "letter exchange, video recording exchange… and group conferencing" (ROPP, 2019) to address the needs of the victim and offender and ensure a constructive and positive healing experience for those involved. This program would be considered a post-conviction restorative justice initiative due to the offender already being convicted of the crime and under the care of CSC (Government of Canada, 2017, National Program R).

The other three federal restorative justice programs value inclusivity where the offences can be of a violent or non-violent in nature, those involved in the case may be indigenous or non-indigenous to Canada, and both youth and adults are welcomed. Specifically, the Peace of the Circles restorative justice program, based out of Vancouver focuses on inclusive healing. Any person who has been harmed is eligible to participate (Government of Canada, 2017, National Programs, P). This program is run across Canada and hold seminars, workshops, and other learning opportunities for all that wish to participate. The Sawbonna Project focuses on a humanist perspective and spirituality. Sawbonna "is a Zulu greeting meaning "I see you". Sawbonna is an approach to life that focuses on witnessing and seeing someone's humanity or spirit. Founder Margot Van Sluytman offers keynotes and workshops about Sawbonna to universities, colleges, communities, homeless shelters, criminal justice advocacy groups, victims groups amongst other entities" (Government of Canada, 2017, National Programs, T). Lastly, the Canadian Families and Corrections Network ensures that families have the proper resources and support when a family member has caused harm, committed an offence, and/or is newly introduced to the criminal justice system (Government of Canada, 2017, National Programs, V).
At the provincial level, there are numerous restorative justice programs focused on victim-offender mediation. Each province offers restorative justice programs, some focus on indigenous victims and offenders, some may focus on violent crimes, still others have no restrictions and embrace all those wishing to participate. To explain specific initiatives, programs in British Columbia and Alberta will be addressed along with those in the North West Territories. British Columbia has the highest number of provincial restorative justice programs. Many are run by the John Howard Society, such as the Adult Restorative Justice (ARJ) Program in Kelowna. Focusing on how harms caused to the victim can be repaired and community healing achieved because a mediation process "creates an equal voice for those who caused harm and the victim(s). Other "community partners" such as law enforcement agencies and corrections services aid in this process (John Howard Assoc., 2019).

In Alberta, the *Aiskapimohkiiks* Program uses both mediation and arbitration to deal with disputes in their community. This program incorporates customs and traditions of the Siksika First Nations and is one of numerous alternative Indigenous justice programs in Alberta. *Aipohtsiniimsta* uses mediation as a first step towards resolution. If one cannot be made, arbitration (*Aiskapimohkiiks*) is used to reach an agreement (DoJ, 2019).

Programs in the Yukon, Nunavut, and the North West Territories use justice committees that focus on diversion strategies for adults and youth. In Nunavut, the initiatives can involve "victim support services, crime prevention activities, offender reintegration, restorative justice programs, and involvement with the Family Abuse Intervention Act" (Government of Canada, 2017, Ontario Programs A-U).

THE USE OF MEDIATION AFTER HATE CRIMES

Over the past decade, police-reported hate crimes in Canada have nearly tripled. As these numbers increase, there is a growing concern to not only understand the factors that motivate hatred towards specific people or groups but to address the needs of those who have been targeted, which includes allowing them to tell their story.

CASE STUDY: RELIGIOUSLY MOTIVATED HATE CRIME IN OREGON, USA & RESTORATIVE JUSTICE

A case study by U.S.-based criminologists Coates, Umbreit, and Vos, illustrates how victim-offender mediation can be used after religiously motivated hate crime to gain an understanding of the crime, how reparations are made, and how forgiveness can be achieved after hate (2013, pp. 165-166).

Much like in any religion or political group, there are always extreme views that conflict with mainstream ideological perspectives and this can lead to fanatical cultural/religious condemnation. For example, the media attention relating extreme and radical Islamic ideologies with violence have created negative stereotypes of Muslims around the world. Mr. Adi, Director of the Islamic Cultural Center in Oregon, was left threatening messages not only on his personal phone but also on the Mosque's answering machine. The messages were left just a few hours after the September 11th, 2001 attack on the twin towers in New York City (USA). The messages were clear death threats to all Muslims (Coates, Umbreit, & Vos, 2013, p.165-166). Heightened fears of extreme violence influenced stereotypes of those from Middle Eastern countries and specifically Muslims (p. 165). The offender later expressed that he felt remorse for his crimes and would like to meet face to face with Mr. Adi to apologize (p. 165). This was the first step in initiating a victim-offender mediation.

VICTIM-OFFENDER MEDIATION PROCESS

Once the Community Accountability Board was contacted in the offender's jurisdiction, the possibility of a "mediated dialogue" was acknowledged and put into motion (p.165). The offender met with mediators to express what influenced him to call and threaten Mr. Adi, his family, and the mosque. The mediators then met with Mr. Adi separately to discuss a meeting between him and the man who caused the harm. Mr. Adi had already shown a desire to meet with the offender in order to understand the hate crime offence (p. 165-166). Mr. Adi wanted to promote healing by participating in victim-offender mediation, but also to educate those who discriminate against Muslims.

Mediation was set to take place in a public display so people could learn from the unfortunate situation. Dialogue from the offender acknowledged that he had remorse for his actions and felt horrible for having threatened not only Mr. Adi's family, but the entire Muslim population. After the first mediation session, the Adi family did not feel any kind of closure or healing. It was noted that in their culture and their beliefs, the threats against their lives did not warrant easy forgiveness (p. 166).

In the second mediation session, they heard the offender's story, and how life events he faced could have influenced his actions. Even though this did not give him the right to engage in the hate crime, the others gained an understanding of his mental state, and anger, at the time of the threats. It was agreed upon that the offender would have to attend lectures on Islam, and talk to young offenders in regard to the threats he made against the Adi family and the Muslim community. The offender would also need to give a public apology (p. 166).

At the end of the second mediation session, all parties involved were on the road to recovery, and the Adi family gained insight on what prompted the individual to hate so much. By the end of the second victim-offender mediation, respectable handshakes were traded between Mr. Adi and the individual who inflicted the harm (p. 166).

Some might argue that restorative justice initiatives are controversial when applied to hate crimes—due to historical events that have targeted certain cultures, religions, and ethnicities. For example, one might understand why those directly victimized during the holocaust may not be willing to sit down with a 'neo-Nazi' today. So, why would a victim of anti-Semitism do the same thing? The mediation process allows those who caused harm the opportunity to gain knowledge about the person's/group's cultural identity, what they believe in, and address social misconceptions that may make them vulnerable to victimization. Thus, victims will influence offenders to come to these realizations; motivating victims to participate in restorative justice initiatives.

CONCLUSION

Victim-offender mediation is a restorative justice approach increasingly gaining popularity within existing criminal justice systems as an alternative method of obtaining justice. Restorative justice, and specifically victim-offender mediation, "humanize[s] the criminal justice process" because the nature of this process forces the offender to face their victim(s), hear their victim(s), and understand and take responsibility for their actions, making the crime and harm caused a reality to the offender (Shenk, 2004, p.302) while empowering the victim on a number of levels. A variety of forms of victim-offender mediation are in use in various provinces and territories in Canada. Successfully employed in the aftermath of hate crimes, mediated open dialogue between victims and offenders promotes understanding about other cultures, ethnicities, religions, and the disadvantages and discrimination they endure. As Zehr (1990) so aptly pointed out: "guilt is narrowly defined, centering on individual behaviour [, which…] allows us to ignore the social and economic roots and contexts of crime". By educating, promoting inclusivity, and spreading awareness through

mediation, tolerance for one another is created, thereby furthering the promotion of peace within our society. ■

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RÉSUMÉ

Mediation: A Restorative Justice Approach

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La médiation entre victime et contrevenant est une approche de justice réparatrice qui gagne en popularité en tant que méthode de rechange pour obtenir justice dans les systèmes contemporains de justice pénale. Le présent article définit ce qu'est la justice réparatrice, illustre le processus de médiation entre victime et contrevenant, examine les programmes offerts au Canada et explore la manière dont la médiation entre victime et délinquant peut être utilisée dans les systèmes de justice actuels. Mme Heck utilise une étude de cas pour démontrer la médiation entre victime et délinquant, où le contrevenant avait participé à un crime haineux motivé par la religion contre la communauté musulmane le 11 septembre 2001. L'auteure aborde également les défis dans le système de justice pénale du Canada et en quoi les aides à la médiation entre victime et contrevenant sont de plus en plus utilisées dans la quête de justice.

100 YEARS / ANS OF CRIMINAL JUSTICE DE JUSTICE PÉNALE

Congress Recap / Récapitulation du Congrès

IRVING KULIK
Executive Director of the Canadian Criminal Justice Association
Directeur général de l'Association canadienne de justice pénale

If you attended our centenary Congress 2019 in Quebec City this past November, you were part of a truly magnificent conference. While we began planning with an estimate of 350 delegates, we actually attracted 500 participants. We always attract important headliners as plenary speakers, but this event featured a line-up beyond comparison.

/ Si vous avez assisté au Congrès 2019 de notre centenaire, à Québec en novembre dernier, vous avez participé à un congrès vraiment remarquable. Nous avions d'abord prévu 350 délégués; nous avons en fait attiré 500 participants. Nous recrutons toujours des têtes d'affiche à titre d'orateurs pléniers . Toutefois, cet évènement a mis en vedette une brochette de conférenciers sans pareil.

Quebec Chief Justice Nicole Duval-Hesler, on the cusp of a critical Quebec appeal regarding Bill 21, opened our Wednesday afternoon with an in-depth description of jury appeals.

/ **La juge en chef du Québec, Nicole Duval-Hesler**, à la veille de l'appel déterminant du Québec à l'égard du projet de loi 21, a ouvert notre séance de mercredi après-midi avec une description détaillée des appels du jury.

CSC Commissioner Anne Kelly closed the opening day describing the many changes in corrections over the course of her career spanning more than three decades. As changes in corrections often take place in reaction to events within society as a whole, Ms. Kelly outlined the challenges facing CSC and the adaptive policies and programmes instituted to meet current and future needs.

/ La commissaire Anne Kelly, de Service correctionnel Canada (SCC), a clôturé la journée d'ouverture en décrivant les nombreux changements apportés au système correctionnel au cours de sa carrière de plus de trois décennies. Les changements au système correctionnel sont souvent apportés en réaction à des évènements dans la société dans son ensemble. Mme Kelly a mis en évidence les difficultés auxquelles fait face le SCC ainsi que les politiques et les programmes d'adaptation mis en place pour répondre aux besoins actuels et à venir.

Thursday morning commenced with a judicial perspective provided by two eminent Quebec judges, **Judge Guy Cournoyer** and **Judge Pierre Hamel** who focused on historical developments in the adult and youth sectors respectively.

Judge Pierre Hamel

/ La matinée de jeudi a commencé par une perspective judiciaire présentée par deux juges éminents du Québec, soit les **juges Guy Cournoyer et Pierre Hamel** qui se sont concentrés sur l'évolution historique des secteurs des adultes et des jeunes, respectivement.

Professor Tony Doob provided an historical perspective on criminal justice policy. It is always fascinating to hear Professor Doob describe how the development of criminal justice policy has been overtaken by political labels and become so divorced from pragmatic and research-based considerations.

/ Le **professeur Tony Doob** a présenté une perspective historique sur la politique de justice pénale. Il est toujours fascinant d'entendre le professeur Doob décrire la manière dont l'évolution de la politique de justice pénale a été supplantée par les étiquettes politiques et s'est éloignée des facteurs pratiques et axés sur la recherche.

Our Thursday afternoon closed with a roundtable led by the Federal Correctional Investigator. **Dr. Ivan Zinger** chaired presentations by **Heidi Illingworth** on victim issues, **Senator Patti LaBoucane-Benson** on the historical issues impacting Indigenous communities and **Dr. Anne Crocker** on mental health. This session focussed on the intersection of criminal justice with each of these issues.

/ L'après-midi de jeudi s'est terminé avec une table ronde dirigée par l'enquêteur correctionnel fédéral. **M. Ivan Zinger** a présidé les présentations de la sénatrice **Patti LaBoucane-Benson** sur les enjeux historiques touchant les collectivités autochtones, d'**Heidi Illingworth** sur les enjeux relatifs aux victimes et d'**Anne Crocker** sur la santé mentale. Cette séance était axée sur le recoupement de la justice pénale avec chacun de ces enjeux.

Our Friday afternoon presentations by **Senator Kim Pate** and **Quebec Ombudsperson Marie Rinfret** described their work in communicating and emphasizing how human rights are too often overlooked and that greater legislative and procedural protections are needed.

/ Les présentations de notre vendredi après-midi, par la **sénatrice Kim Pate** et la **protectrice du citoyen du Québec, Marie Rinfret**, décrivaient leur travail en communiquant et soulignant la manière dont les droits de la personne sont trop souvent négligés et que de meilleures mesures de protection législatives et procédurales sont nécessaires.

Congress 2019 was honoured by the presence of the Chief Justice of the Supreme Court of Canada, **the Right Honourable Richard Wagner**, as our banquet speaker. The Chief Justice directed much of his talk to tracing just how badly the criminal justice system has failed Indigenous people, and he closed by underlining hope for fair and dignified treatment of all participants in the criminal justice process. He stressed that by listening and building relationships we can strive for a system based on shared values and priorities.

Right Honourable Richard Wagner (right); CCJA Executive Director **Irving Kulik**
Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

/ Au Congrès 2019, nous avons eu l'honneur d'accueillir le juge en chef de la Cour suprême du Canada, **le très honorable Richard Wagner**, à titre d'orateur d'honneur au banquet. Le discours du juge en chef retraçait en grande partie à quel point le système de justice pénale a trahi les peuples autochtones. Il a terminé en insistant sur l'espoir d'un traitement juste et empreint de dignité pour tous les participants au processus de justice pénale. Il a fait valoir qu'en écoutant et en créant des relations, nous pouvons aspirer à un système fondé sur des valeurs et des priorités communes.

Congress closed on Saturday morning with two more outstanding presenters, ***Professor Pierre Noreau*** - who illustrated just how difficult it is to bring about change in society - and **Senator Pierre Joyal**, a Parliamentary veteran and constitutional expert who described some changes to the criminal code over the course of his lengthy career and the challenges we face today, many of which are global in nature.

/ Le Congrès s'est clôturé samedi matin avec deux autres conférenciers remarquables, soit le **professeur Pierre Noreau** — qui a montré à quel point il est difficile de changer les choses dans la société — et le **sénateur Pierre Joyal**, vétéran aguerri des débats parlementaires et éminent constitutionnaliste, qui a décrit certains changements apportés au Code criminel au cours de sa longue carrière et les difficultés auxquelles nous faisons face aujourd'hui, dont bon nombre sont de nature internationale.

Crédit photo:
Nathalie Dansereau, Colibri Stratégie inc.

While describing each of the plenary speakers I do not intend to ignore the 52 workshops and 100-plus presenters, all of whom did a marvellous job in addressing important issues with their research findings. Attendance and interest underlined the quality of each session, as did the evaluations received.

/ Même si je décris chacun des conférenciers pléniers, je n'ai pas l'intention d'ignorer les 52 ateliers ni les plus de 100 conférenciers qui ont tous abordé d'une excellente manière les enjeux importants dans les résultats de leurs recherches. La participation et l'intérêt ont mis en évidence la qualité de chaque séance, tout comme les évaluations reçues. Congress provides an

Dr. John Winterdyk (Mount Royal University) - CCJA Public Education Award
Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

opportunity for CCJA to present our biennial awards, and I would like to congratulate **Gord Sand**, the recipient of our Willie Gibbs Lifetime Achievement Award, for his forty years of work in community corrections; **Dr. John Winterdyk,** recipient of the Public Education Award, for his marvellous national and international work in criminal justice and particularly his contribution to CCJA; and **Dr. André Normandeau**, for his Award celebrating 50 years of contributions to our *Canadian Journal of Criminology and Criminal Justice*.

/ Le Congrès a été une occasion pour l'Association canadienne de justice pénale (ACJP) de présenter nos prix bisannuels. J'aimerais féliciter **Gord Sand**, lauréat de notre Prix Willie Gibbs pour l'ensemble des réalisations, pour ses quarante années de service dans les services correctionnels communautaires; **M. John Winterdyk,** lauréat du Prix d'éducation du public, pour son travail remarquable au pays et à l'étranger dans le domaine de la justice pénale et en particulier sa contribution à l'ACJP et **M. André Normandeau**, pour son prix célébrant 50 années de contributions à notre *Revue canadienne de criminologie et de justice pénale*. Je tiens à remercier sincèrement chacun de vous.

I extend sincere thanks to each of you.Finally, Congress 2019 could not have been the success it was without the sterling partnership with the Societé de Criminologie du Québec, especially **President Dr. Marion Vacheret** and my colleague, **Executive Director Caroline Savard**. Merci beaucoup Marion et Caroline!

Crédit photo:
Nathalie Dansereau, Colibri Stratégie inc.

Time management is critical in planning and organizing a conference of such large, national scope and can mean fairly limited session durations. This is unfortunate, as many would have enjoyed hearing so much more from the plenary and workshop speakers. Well, Congress 2021 is now not so far away and will give us another opportunity to showcase the successes and challenges of the present-day justice system in as much detail as possible. Pencil in Ottawa, September 2020!

/ Enfin, le Congrès 2019 n'aurait pas été un tel succès sans l'excellent partenariat avec la Société de Criminologie du Québec, en particulier la **présidente, M^me^ Marion Vacheret** et ma collègue, la **directrice générale Caroline Savard**. Merci beaucoup Marion et Caroline!

La gestion du temps est essentielle dans la planification et l'organisation d'un congrès d'une telle portée nationale, où la durée des séances peut être assez limitée. C'est dommage parce que beaucoup de participants auraient aimé entendre encore davantage nos conférenciers pléniers et d'ateliers. Eh bien, le Congrès 2021 n'est maintenant pas si loin. Il nous donnera une autre occasion de mettre en valeur les réussites et les difficultés du système de justice d'aujourd'hui, et ce, de la manière la plus détaillée possible. À vos crayons à Ottawa, en septembre 2020!

We also wish to thank our outgoing **president, Mihael Cole**, and congratulate the incoming **Angela Falk, CCJA President** as of November 9, 2019. A long-time CCJA board member, Ms. Falk arrives at the helm with great enthusiasm, expertise and professional candour.

Credit: CCJA

I wish you all a Happy, Healthy and Peaceful 2020. • **IRVING KULIK**

/ Nous souhaitons également remercier le président sortant, **Mihael Cole**, et féliciter la nouvelle **présidente Angela Falk**, en fonction depuis le 9 novembre 2019. Membre du conseil d'administration de l'ACJP de longue date, Mme Falk accède à la présidence avec beaucoup d'enthousiasme, d'expertise et d'ouverture professionnelle.

Crédit photo:
Nathalie Dansereau, Colibri Stratégie inc.

Je vous souhaite à tous et à toutes une année 2020 remplie de bonheur, de santé et de paix.• **IRVING KULIK**

Marty Maltby - Senior Policy Analyst, Aboriginal Initiatives at Correctional Service of Canada
Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

Howard Bebbington - CCJA Policy Review Committee (PRC) Chair Credit: CCJA

Paul J. Williams - CCJA President (1991-1994)
Irving Kulik - CCJA Executive Director Credit: CCJA

David Henry, ASRSQ Executive Director: **Senator Kim Pate; Quebec Ombudsman Marie Rinfret; Dr. Stacey Hannem,** CCJA Poliy Review Committee (PRC) member. Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

British Columbia Criminal Justice Association (BCCJA)
Manj Toor - BCCJA Treasurer | **Hank Mathias -** BCCJA President
Tim Veresh - BCCJA Past President Credit: CCJA

Stefan Horodeckyj, JD - PRC Committee member
Cecilia Kwok - Probation/Parole Officer, Toronto Anti-Guns and Gangs Unit at Ministry of the Solicitor General Credit: CCJA

Workshops / Ateliers
Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

John Braithwaite (1927-2019)
Gone but not forgotten

Opening Ceremonies
Raymond Gros-Louis, Nation Huronne-Wendat
Crédit photo: Nathalie Dansereau, Colibri Stratégie inc.

The Right Honourable Richard Wagner, P.C., Chief Justice of Canada
Dr. John Winterdyk, Mount Royal University
Credit: Rosemary Buck

Restorative Justice: Conferencing

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Restorative conferencing has been introduced slowly into the Western 'mainstream justice system' over the past few decades. Many of the existing programs are for youth, with New Zealand and Northern Ireland in particular mandating youth in conflict with the law to participate in pre-sentencing restorative conferencing. Adult offenders remain on the periphery of restorative justice in New Zealand but in some cases do qualify for conferences. There have been successful outcomes in this regard and even cautious optimism around the use of RJ in relation to serious interpersonal crime. While victim satisfaction is significantly higher with conferencing than a court process, the forms currently in practice may be limited in scope. Concerns include the limitations on the range of crimes conferencing can address, as well as structural considerations vis-a-vis the potential for power imbalances related to gender and, at a broader level, deficient language competencies of the potentially marginalized youth offender.

INTRODUCTION: RESTORATIVE JUSTICE AND THE PRACTICE OF CONFERENCING

Restorative justice and the practice of conferencing are still relatively new additions to the Western adversarial structure of criminal justice. In their current usage, restorative practices are mostly directed at young offenders, some first-time offenders and – less frequently – repeat offenders. Adult offender conferences involve a similar group of participants but have in certain cases been able to address more serious types of crime such as sexual assault and other forms of interpersonal violence. As a restorative process, conferencing seeks to initiate healing and accountability through (mediated) dialogue between offender and victim, and the community. At the centre of restorative conferencing practices is the voluntary participation of a victim (or a delegated representative), allowing the victim to express their hurt and receive the benefit of a healing process not provided by adversarial/retributive systems. In this article, the practice of conferencing practices in New Zealand and Northern Ireland in relation to both youth and adults will be explored, including a look at the potential benefits to victims and offenders. In addition, a number of issues and challenges related to the current state and usefulness of restorative conferencing will be discussed.

YOUTH CONFERENCING IN NEW ZEALAND

As defined by O'Mahony (2008) in the *Dictionary of Youth Justice*, restorative youth conferencing is "a process that gives young offenders the opportunity to understand and make amends to their victims and community for the consequences of their offending". The practice of youth conferencing has thus far been greatly shaped by practices originating in New Zealand, the first nation to develop government legislation to deal specifically with the relationship between youth in conflict and their families (Maxwell & Morris, 2006, p. 243). *The Children, Young Persons, and Their Families Act* (1989) designates family group conferencing as a mandatory step for youth in conflict with the law (Maxwell & Morris, 2006, p. 241).

The New Zealand RJ model has its origins in the traditions and culture of the Indigenous Polynesian people of New Zealand—the Maori. As Hass-Wisecup & Saxon (2018) have asserted, Maori culture is founded on the idea of "balance" (p. 103). Community balance is maintained when each member is able and committed to attaining physical and spiritual health, a healthy conscience and educational wellbeing (p. 103). With restorative justice, when one community member experiences a disruption at any of these foundational levels, the community is obligated to intervene and

help restore balance through restoration and remediation processes.

Maori justice traditions do not focus on finding fault and assigning punishment

A criminal action is one that creates harm to the well-being and integrity of the community and its members (Hass-Wisecup & Saxon, 2018, pp. 103-104). Maori traditions do not focus on finding fault and assigning punishment. Instead, the focus is on bringing the community together and into rebalance through facilitated dialogue, communication and restorative actions. The overrepresentation of Maori children in New Zealand's traditional juvenile justice system provided the impetus for the family group conferencing practice established in the 1989 legislation (Maxwell & Morris, 2006, p. 241).

The restorative conferencing step is taken either before charges are laid or before a sentence is issued (Maxwell & Morris, 2006, p. 242). If conferencing occurs pre-charge and is successful, the matter is considered resolved and the youth will not face formal criminal charges (p. 240). If conferencing is post-charge but pre-sentence, the conference results and recommendations must be considered during sentencing (p. 240). It is important to note that this model of youth justice does not constitute a replacement of the Western retributive/adversarial justice system with Indigenous methods but is a "culturally appropriate" blending of indigenous practice in an updating of conventional justice models (p. 244).

In the United Kingdom (UK), Ireland is the only country to have adopted a similarly mandated approach to restorative conferencing for youth. Its approach was introduced in 2003 with two types of conferences implemented: diversionary and court ordered (O'Mahony, 2008). Similar to those in New Zealand's legal system, the restorative options introduced in Ireland mandated that they be considered first when dealing with youth criminality pre- and post-charge (O'Mahony, 2012, p. 553).

For diversion to occur, Ireland's Public Prosecution Service is the agency responsible for referring youth away from court prosecution, but the youth must first "admit to the offence and consent to the process" (O'Mahony, 2012, pp. 555-556). Court-ordered conferences are issued post-charge in court, where conferencing must be considered before sentencing when dealing with youth (O'Mahony, 2012, p. 556). These also require them to admit guilt and agree to the conferencing process, (O'Mahony, 2012, p. 556). Exceptions to this mandatory consideration of conferencing are crimes carrying a life sentence, indictment only offences, and terrorism offences (O'Mahony, 2012, p. 556).

The structure of restorative conferencing is similar in New Zealand and Ireland. The practice includes offender(s), victim(s), a conference leader or coordinator, family and community members, and law enforcement representatives (O'Mahony, 2012, p. 555; Maxwell & Morris, 2006, p. 248). Once the young person has accepted responsibility for the offence, the conference can proceed with the attending participants working together to form recommendations for what the youth offender can do to repair the harm caused (O'Mahony, 2012, p. 555; Maxwell & Morris, 2006, p. 248).

Common resolutions in New Zealand include "an apology, reparation, work for the victim or the community, donations to charity, restrictions on liberty such as a curfew or grounding, and the provision of counseling or training programmes" (Maxwell & Morris, 2006, pp. 248-249). In Ireland, conference results typically include "an apology, some form of reparation to the victim and community, and elements to address the young person's offending behaviour" (O' Mahony, 2012, p. 555). These outcomes reflect the need for the offender to understand the impact of their behaviour on others, specifically the victim (O'Mahony, 2012, p. 555).

ADULT CONFERENCING FIRST INTRODUCED IN NEW ZEALAND AND AUSTRALIA

The use of restorative justice conferencing with adults within contemporary retributive justice systems evolved from youth-based practices in New Zealand and Australia. The first adult programme was introduced in 1994 (Halsey, Goldsmith, & Bamford, 2015, p. 483). Until then, restorative justice had been youth focused and some argue that adults will continue to be on the periphery of restorative conferencing (Halsey, Goldsmith, & Bamford, 2015, p. 484).

Unlike New Zealand's mandated approach for youth, Australia slowly introduced adult restorative programs into its criminal justice system due to the influential nature of literature on topics such as

diversionary measures and in the hope of reducing high rates of recidivism among offenders (Halsey, Goldsmith, & Bamford, 2015, p. 485). Since the initial program so closely modeled the youth version, almost all aspects of the conference are similar—with the exception that adult conferences are generally part of sentencing rather than a pre-charge diversion option (Halsey, Goldsmith, & Bamford, 2015, p. 486).

The impact of restorative justice conferencing for adults in relation to sexual assaults was explored by the University of Arizona Professor Mary P. Koss (2014) , who concluded a "cautious optimism regarding feasibility, safety, and satisfactory outcomes" (p. 1623). Koss also highlighted the value of considering an adult conferencing approach because of the way it individualizes the process and accords attention to heightened safety during the conferencing to avoid unintentionally adding harm to victims of sexual violence participating in the conferencing (p. 1651).

THE ROLE OF VICTIMS IN RESTORATIVE CONFERENCING

In the adversarial justice system often found in Western countries, the role of victim is minimized generally to the options of giving an impact statement, watching the court proceedings if any occur, and often not being involved in the process beyond the investigation phase. Restorative conferencing varies greatly. A 2006 study in Ireland by UK experts Doak & O'Mahony on youth conferencing was concerned with the way victims participate and interact with offenders (p. 161). The key to avoiding additional harm to the victim is the requirement of voluntary participation. This differs from the adversarial system, which may compel a victim to testify in their case (p. 161). In Northern Ireland, victims participating in youth restorative conferencing processes had mostly been involved with serious offences such as assault and "intermediate offences against the person and property" (p. 162). In the majority of serious crime cases, the victim's perspective on the impacts of their victimization was shared at the conference by a representative (p. 163).

While there are some concerns that victims may have ulterior motives for taking part, such as vengeance or retribution, the Doak & O'Mahony (2006) study found the most common reason for attendance was to understand their own victimization and explain to the offender the impact it had had on their life (p. 165). In addition to this, the victims wanted to better understand the offender and to help them do better in life (p. 165). Overall, only 13 percent of victims who participated in the study expressed the wish their offender had also been dealt with by a court after the conference took place and identified the restorative option as an "easy option" (p. 171).

Offenders who participated in the conferencing did not agree it was an "easy option". Some said apologizing to their victim was much more difficult than participating in court proceedings and realized that the apology was much more rewarding and impactful than traditional court (Doak & O'Mahony, 2006, p. 171). Even though some of the victims saw this option as easy, 91 percent of those who participated would "recommend conferencing to someone in a similar situation to themselves" (p. 171). A similar study conducted by Strang et al. (2006) found consistent results on victim satisfaction after participating in conferencing in Australia and the UK, with victims feeling decreased anger and increased sympathy and (84 percent) willing to recommend the process to other victims (pp. 296, 198, 301).

CONFERENCING CONCERNS

While restorative conferencing programs are able to provide healing and closure, for both victims and offenders, they are not without concerns for some. In Canada, the Office of the Federal Ombudsman questions whether restorative justice can be used appropriately with more serious crimes involving victim-offender power imbalances. The risk for revictimization due to a possible power imbalance is a necessary consideration with cases involving interpersonal violence and gender-based violence, and most current programs are not structured to properly address this (Office of the Federal Ombudsman, 2017). In its current form, restorative conferencing seems to remain limited to less serious crimes for both youth and victims, broadly excluding more serious cases rather than taking a case-by-case approach.

Gender and conferencing

The issue of gender in restorative justice conferencing is a perceived risk factor for women offenders. A study conducted by the UK criminologists Österman & Masson (2018) examines the many complexities of female offenders with conferencing, particularly as regards the nature of the relationship between the offender and the victim as well as the emotions

of the offender (pp. 21-22). They suggest the current use of restorative conferencing does not consistently address the pre-existing victim-offender relationship that often exists when the offender is a woman (p. 11). Instead of meeting with a stranger they had victimized, an offender might thus have to confront a victim who was also previously a friend. It is this deeper aspect of the victim-offender relationship that becomes the most difficult to face and adds greater emotional complexity to the process (pp. 11-12). While the reparation of such personal relationships through restorative conferencing can bring increased positive outcomes, it is suggested they also have the potential for particularly negative experiences (pp. 11-12).

Marginalized youth and language competency

In the countries that have employed it, youth conferencing has been largely successful in terms of satisfaction levels among both victim and offender. Although this may be the case, one issue that two Australian speech language pathologists, Pamela Snow & Dixie Sanger (2011), have identified with youth is the questionable language competency of marginalized populations participating in conferencing. Due to the invisible nature of language competency, neither the youth nor the facilitator may be aware of a deficit and the conferencing process arguably loses the majority of its impact if offenders are unable to express themselves completely and "with a level of perceived genuineness that is [proportionate to] how they actually feel" (p. 331). To counter this problem, Snow and Sanger suggest including a speech-language pathologist in the conferencing process.

CONCLUSION

The current practice of restorative justice conferencing provides resolution and satisfaction for victim and offender rarely attained in the strictly adversarial context of retributive justice that has long characterized most Western systems. Since the conferencing process is voluntary for all parties, those who participate in conferences are generally genuinely invested in achieving a positive outcome for all concerned. As noted earlier, even in countries that mandate the consideration of conferencing for youth, such as New Zealand and Ireland, the conference can only proceed once the youth accepts responsibility for the offense. Nonetheless, it is important to consider concerns such as the impact of gender-related power imbalances and low-language offender competency on the conferencing process and its outcomes. Until these issues are taken into consideration, it is conceivable and likely that the statistics showing success or failure of restorative conferencing will not accurately capture the true experiences of participating offenders or the success/failure of the practice. ■

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RÉSUMÉ

Restorative Justice: Conferencing

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Les conférences de réparation ont été lentement introduites dans le « système de justice traditionnel » occidental au cours des dernières décennies. Bon nombre des programmes existants sont à l'intention des jeunes. En effet, la Nouvelle-Zélande et l'Irlande du Nord, en particulier, obligent les jeunes en conflit avec la loi à participer à des conférences de réparation pendant la détention présentencielle. Les contrevenants adultes restent à la traîne en matière de justice réparatrice en Nouvelle-Zélande, mais dans certains cas, ils sont admissibles aux conférences. On a observé de bons résultats à cet égard et même un optimisme prudent à l'égard de l'utilisation de la justice réparatrice en lien avec les crimes interpersonnels graves. La satisfaction des victimes est beaucoup plus élevée dans le cadre de conférences que dans un processus judiciaire, mais les formes de conférences actuelles utilisées peuvent avoir une portée limitée. Les limites à l'égard de l'éventail de crimes pour lesquels les conférences peuvent être utilisées de même que des facteurs structuraux liés à la possibilité de déséquilibres des pouvoirs liés au genre et, de façon plus générale, les capacités linguistiques insuffisantes des jeunes contrevenants potentiellement marginalisés sont sources de préoccupations.

Restorative Justice: History and Principles

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While restorative justice is a relatively new form of justice initiated in Elmira (ON) Canada starting in 1974, its roots are found in the cultures and history of many Indigenous groups around the world, including New Zealand's Maori. Many theorists/researchers and criminal justice systems of countries around the world have since taken up the challenge. Howard Zehr is considered by many to have advanced the understanding of restorative justice by contrasting its underlying assumptions and principles with mainstream retributive justice. Today, restorative justice options exists at every stage of the criminal justice process. By infusing more restorative justice into current retributive/adversarial justice systems, we begin to work towards raising the bar on criminal justice.

The restorative justice paradigm is often seen as a response to a troubled retributive justice system, which exists to varying degrees in Canada and most other Western societies. Some forms of restorative justice and the values it promotes are linked to traditional Indigenous approaches to addressing harm and conflict and also to various religious beliefs. Restorative justice has many aims and priorities that our current mainstream justice system often precludes: restoration of the victim, offender, and community. Unlike in retributive justice, the State is not the victim in restorative justice and, the focus is on repairing the harm done rather than punishment. There are many forms of restorative justice programs, and some are more restorative than others. Restorative justice can be employed at four points of the justice process (pre-charge, post charge, pre-conviction and pre-sentence) and by different players in the justice system.

TWO EARLY AND HIGHLY NOTABLE RESTORATIVE JUSTICE EXAMPLES IN CANADA

The Elmira Case

In Canada, restorative justice can be said to have started with a then-unique response (victim-offender mediation) by law enforcement to a rash of vandalism in Elmira, Ontario (Peachy, 2013, p. 75) in which two intoxicated young men vandalized multiple homes and property; they were apprehended and plead guilty to 22 counts of willful damage on May 28, 1974 (See Heck's article in this edition). On his own initiative, probation officer Mark Yantzi enclosed a letter with his pre-sentence report stating he believed it would be therapeutic for the offenders to meet the victims. While the judge stated he did not think it was possible to ask the offenders to meet their victims, he decided to hand down a one-month suspended sentence to afford the offenders time to meet their victims and assess the damages with the assistance of the probation officer and a like-minded member of the Mennonite Central Committee, Dave Worth (MCC, 2013, pp. 75-76).

Yantzi and Worth accompanied the offenders to meet the victims (whose permission had already been obtained) at the locations where they had damaged property, slashed tires, or broken windows (Wisecup & Saxon, 2018, p. 83). The offenders would knock, explain who they were and why they were there. The mediators, Worth and Yantzi, facilitated the process when needed, took notes, and also recorded the financial cost of the damage. A month later, back in court as per the first ruling, the judge ordered 18 months probation and a $200 fine for each offender. Based on the financial

information presented by the probation officer, the judge also ordered the offenders to pay restitution to the victims.

Though the length of time from the offence to restitution being paid was long, the results were considered a great success. Within three months both the fines and restitution had been paid, with the offenders personally delivering the cheques to the victims. The encounter with the victims had had a major impact on the offenders, one of whom later stated, "I didn't quit because of my self-respect, and I didn't want to have to look over my shoulder all the time." (p. 76). The victims had varying reactions. One quote from Yantzi and Worth stated "thanks, I never expected to see that money. I think I'll spend it in a very special way to help somebody else." (p. 76). Another victim expressed frustration and told the offenders "...I hope we don't ever have this problem with you again, or anybody else." (p.76).

Encouraged, the probation officer in the Elmira case and his colleague from the MCC continued to brainstorm new ideas and refine their processes. These early processes would convene some years later in a new programme called the Victim/ Offender Reconciliation Process or VORP (Peachy, 2013, p. 76).

Victim-offender reconciliation was the main goal of this new process. The Elmira case is an oft-cited, important example of the Canadian roots of the modern practice of restorative justice. Presumably based on his Mennonite teachings, one probation officer had theorized the value of face-to-face victim-offender meetings as a beneficial process of restitution and reconciliation, and this would be the dawn of a new justice movement in Canada and elsewhere.

Maori, New Zealand

The Maori people of New Zealand constitute another major influence on the modern restorative justice movement. Like many Indigenous cultures, the Maori has fundamental values of collectivism and interconnectedness (Vielle, 2012, p. 9). Consequently, justice to the Maori involves an intricate web of relationships that is broken to varying degrees when a crime is committed. Kinship-based justice thus can be seen as a way of nurturing and sustaining relationships. When an offence is committed, the first RJ step is to examine the relational ties between offender and victim. Once the relationship has been explored, a conversation about "why" the offence occurred and how it can be resolved ensues.

Establishing a relationship through face-to-face encounters encourages accountability, partly by doing away with anonymity. Dispensing with anonymity allows us to see how the community is affected by the offence (Hass-Wisecup and Saxon, 2018, pp. 103-105). The community or tribe comes together in a home or a communal gathering place and, depending on the severity of the crime, to discuss the offence and repair relationships. This conferencing approach is central to Maori justice. Family Group conferencing in RJ relies on the collective approaches of the Maori people (Vielle, 2012, p. 2). The victim-offender mediation of the Elmira case was strictly between the victim and offender, thus excluding the community from the RJ process (Peachy, 2013, p. 76).

According to the Maori system of justice, responsibility for the offence can be on the offender's family (Hass-Wisecup and Saxon 2018, p. 104), and the harm is seen to extend to the victim's family and the greater community. Given this communal harm, it seems natural for the entire community to have a part in the justice process. The community responsibility extends to the offender as well as the victim. The offender also needs to be supported and social relationships rebuilt.

When an offender's community comes together to resolve a crime, there are no observers; everyone in attendance plays an active role. By actively participating, community shows and learns the value of social stability, harmony, and justice as communal assets and integral to the justice process (Vielle, 2012, p. 9). Justice is achieved when a solution considered just and fair by the community is decided upon. Both offender and victim can give their input and opinion on a voluntary basis.

Maori justice is a relational concept of community/ society and justice that allows the offender, victim and their supports to express, in a safe and mediated environment, how they have been affected by the offence. Relational justice is the basis of the Maori group conferencing model (Hass-Wisecup & Saxon, 2018, p. 105), which lends itself well to reintegrative shaming as a solution

leading to reduction of recidivism for crime and deviance. The imminent Australian criminologist John Braithwaite's theory of reintegrative shaming merges principles from other theories that focus on social control and social bonds (Tibbets, 2019, p. 248). Braithwaite based the theory of reintegrative shaming on the constructs of interdependence and communitarianism in Japanese culture (Tibbets, 2019, p. 250). In Japanese culture offenders are shamed, through public apologies, for their criminal actions and then formally reintegrated into their community (Tibbets, 2019, p. 250).

This relational focus envisions maintenance of mutually supportive relationships, making Maori justice a holistic approach focused on healing the offender, the victim and the whole community - as all are deemed to have been affected by the offence. Modern restorative justice draws on the traditional practices of the Maori people's dispute-resolution process, which is currently represented in RJ conferencing practices.

RESTORATIVE VS. RETRIBUTIVE JUSTICE

The esteemed U.S. 'founder' of restorative justice Howard Zehr is a central figure in an early articulation and advocacy of restorative justice approaches beginning in the 1970s and picking up momentum in the following two decades (Hass-Wisecup & Saxon, 2018, p. 22). According to Zehr (2013, p. 32), our current justice system is based primarily on retribution, conflict and an adversarial court model. Under retributive justice, crime is a violation against the state and is focused on blaming the offenders and 'curing' them with punishment. Retributive justice measures justice by the outcome and the process. Retributive justice focuses on the offender and the crime they committed against the state, and the victim is a witness in the state's case (Bazemore & Umbreit, 1997, p. 15). As pointed out by the renowned Norwegian criminologist Nils Christie (1997), retributive justice systems 'steal the conflict', appropriating the offence (conflict) and deciding a solution with minimal input (denying full participation) from the offender or, especially, the victim. The conflict (in retributive justice systems) is thus transformed from an issue between victim and offender to one involving offender and the State (Christie, 1977).

Howard Zehr consequently proposed a new definition of crime, as a violation of one person against another (2013, p. 32). Restorative justice also focuses on the role of the community in an offence (Bazemore & Umbreit, 1997, p. 15). The aim of restorative justice is to develop a positive relationship between the victim and the offender. Restorative justice works to put victim and offender at the centre of the conflict instead of on the periphery as in retributive justice (Zehr, 2013, p. 32).

One of Zehr's early contributions to the literature on restorative justice was his articulation of the differences between restorative justice and retributive justice. A project carried out by the U.S. Office of Juvenile Justice and Delinquency Prevention (OJJDP, 1997) along with Bazemore & Umbreit and other researchers presents Zehr's comparison as shown in Table 1.

Zehr proposes that crime be defined as a violation of one person by another (2013, p. 32). In restorative justice, crime is between the victim and the offender and also involves/affects community, whereas in retributive justice crime is considered to have been committed against the State. Restorative justice also focusses on the role of community in an offence (Bazemore & Umbreit, 1997, p. 15). The victim, and restoring his or her relationship with the offender, is the focus of restorative justice. Restorative justice works to put the victim and the offender at the centre of a reconciliation process instead of on the margins of a punishment process as in retributive justice (Zehr, 2013, p. 32).

HOWARD ZEHR'S THREE RESTORATIVE JUSTICE PRINCIPLES

Howard Zehr's three main principles of restorative justice are widely accepted, as illustrated by their use on the Department of Justice Canada website (2017): (1) Crime is a violation of interpersonal relationships (2); These violations create obligations and liabilities; (3) RJ seeks to heal and right the wrongs.

Zehr (2003) – Harm done to victims

The first of Zehr's principles focuses on the harm done to the primary victim(s) and to the community, which have been harmed by the offence and need restoration. Collateral victims can be family members, witnesses, and/or any community members affected (by fear for example) by the offence. These community relationships must also be addressed and restored. Zehr, however, also posits restoration as "a continuum

TABLE 1
(see source, below)

	RETRIBUTIVE JUSTICE	RESTORATIVE JUSTICE
WHAT IS A CRIME?	An act of public harm against the **state**.	An act of harm against **another person and the community.**
WHO IS RESPONSIBLE FOR CRIME CONTROL?	The **criminal justice system** is primarily responsible for crime control.	Crime control is primarily the responsibility of the **community**.
HOW IS AN OFFENDER HELD ACCOUNTABLE?	Offender accountability is in the determination of **guilt and through punishment.**	Offender accountability is in assuming **responsibility and taking actions to repair the harm**.
HOW IS PUNISHMENT EFFECTIVE?	Punishment is effective in that it has **specific deterrent effect** by changing offender future behavior. It also has a **general deterrent effect** on others.	**Punishment alone is not effective** in changing offender behavior as it only indirectly links offenders to the harm done to victims and community.
WHAT IS THE ROLE OF VICTIMS?	Victims are **peripheral** to the process of accountability.	Victims are **central** to the process of repairing the harm.
HOW ARE OFFENDERS VIEWED?	Offenders are defined as **callous** or as being **unable to function properly** in society.	Offenders are defined by their **capacity to make reparations** to the victim and community.
WHAT IS THE FOCUS OF CRIMINALPROCESSES?	Focus is on **establishing criminal liability** (guilt) and blame for past actions.	Focus is on **recognizing harm** caused to a victim and community and finding ways of **repair and remediation**.
HOW ARE RELATIONSHIPS CHARACTERIZED?	Relationships are **adversarial** with a focus on minimizing legal liability for the crime.	Relationships focus on **problem-solving, negotiation and remediation** for victim, offender and community.
WHAT IS THE ROLE OF THE COMMUNITY?	Community is represented indirectly by the state but **has no direct role**.	Community is the **facilitator in the restoration and remediation** of harm.
WHAT IS THE PRIMARY FOCUS?	The process focuses on **punishing past behavio**r.	The process focuses on the harmful consequences of offender behavior with an **immediate focus on repairing the harm**.
WHO RUNS THE PROCESS?	**Professionals** who represent the different parties (e.g., Crown, Judge, Defense Counsel, Jury).	The process is run primarily by the **community and victims**.

SOURCE. Adapted from *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century*. Office of Juvenile Justice and Delinquency Prevention. Office of Justice Programs. U.S. Department of Justice. (1997). Table 11 – p. 15. Retrieved from www.ncjrs.gov/pdffiles/framwork.pdf

of responses to the range of needs and harms experienced by the victims, offenders and the community (Zehr cited in DoJC, 2017). As such, all involved parties are stakeholders in justice processes and outcomes. To function properly, therefore, restorative justice requires the (voluntary) participation of victim, offender, and community. The State retains its role in justice as investigator, facilitator and in ensuring public safety, but is not considered the primary victim as in retributive justice systems.

Zehr (2003): Efforts should focus on repairing the harm

The second of Zehr's principles (DoJC, 2017) states that violations create obligations and liabilities and efforts should focus on repairing the resulting harm. Instead of focusing on the offender's guilt and punishment, an RJ approach creates a forum in which an offender can realize the harm done and discover his or her obligation, whatever it might take, to "make things right". The offender's obligation is thus to 'restore' the victim. The victim is then empowered through participation in the process of restoration. Offenders need to be given opportunities to understand the harm they have caused the victims and the community. Once they understand the harm, they can make plans to take responsibility for the offence. RJ puts the victim rather than the State at the centre of justice. The community needs to support and meet the needs of the victims and any associated residual needs in the community. Community obligations include reintegrating the offender, being actively involved in defining the offender's obligations, and providing opportunities for the offender to make amends.

Zehr (2003): Restorative justice seeks to heal the harms and right the wrongs

Zehr's final principle is that restorative justice seeks to heal the harms and right the wrongs, prioritizing the victim (Zehr as cited by Government of Canada, DoJC, 2017). In restorative justice, the victim is necessarily involved in the process, being given information, validated, supported, and vindicated. A victim's input is understandably crucial to the process of determining the needs and hoped-for outcomes as regards restoration. RJ processes are non-adversarial and make maximum use of information exchange, dialogue, participation, and consent from both victim and offender. Healing is also needed for the offender. Zehr states that the offenders' needs and competencies must also be addressed to allow for healing and re-integration. Restorative justice values personal change over 'compliant' behaviour in the offender. The community has control over the reconciliation process. In terms of outcomes, restorative justice seeks to promote changes in the community for prevention, early intervention for victimization and help for offenders coming to terms with their own accountability.

FIGURE 1 - TYPES AND DEGRESS OF RESTORATIVE JUSTICE PRACTICE

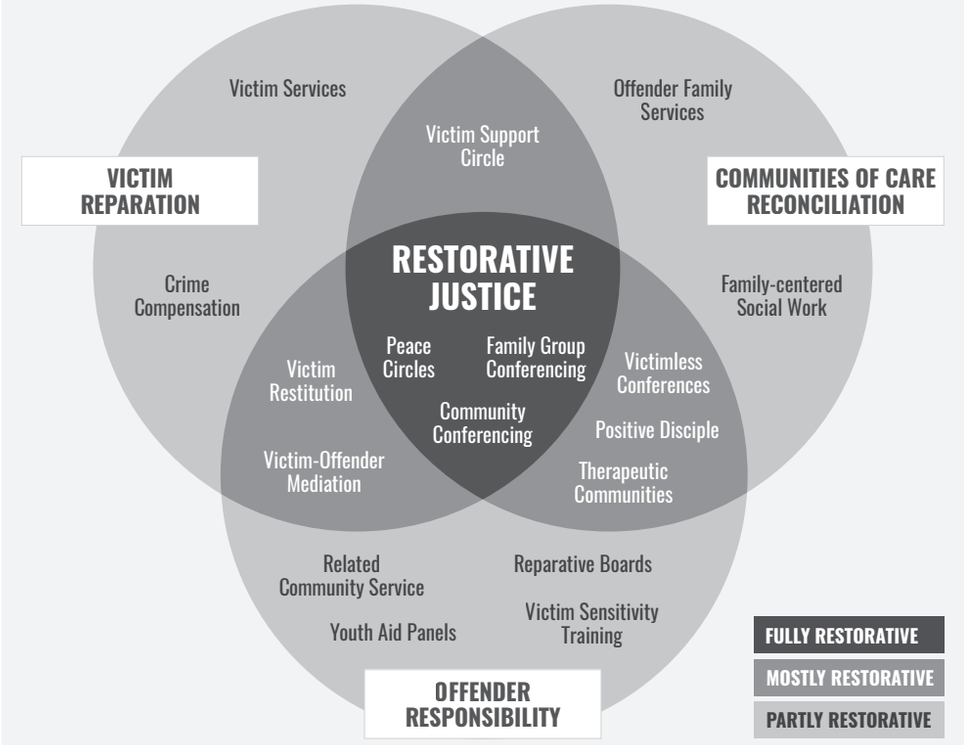

FIGURE 1. Types and Degrees of Restorative Justice Practice
SOURCE. Reprinted from *Defining restorative*. Watchel, T. (2016). Bethlehem., PA: International Institute for Restorative Practice. Retrieved from www.iirp.edu/defining-restorative/purpose

As illustrated in Figure 1, above, there are many types of restorative justice practices and programs. Programs may not include all parties (victim, offender, tertiary victims; community), however the more inclusive the more truly restorative the program can be. In the Elmira case, victim-offender reconciliation was used. Mediation is a new more facilitated form of victim-offender

reconciliation (Peachy, 2013, p. 77) (Strickland, 2004, p. 9). Other types of restorative justice programs are victim-offender panels, which include multiple victims and offenders, family or community group conferencing, and community peacemaking or sentencing circles (Strickland, 2004, p. 12). Community peace making and sentencing circles include the community, offenders, and victims as justice system participants in the RJ process. Though quite different, these different types of programs have mediation in common.

Figure 2 shows how all three parties - victim, offender, and community can be involved in restorative justice processes. Restorative justice programs in Canada are looking to complement the Canadian justice system rather than replace it (United Nations, 2006, p. 13).

CONCLUDING REMARKS

Restorative justice comes in multiple forms and at different points (pre-charge, post-charge, pre-conviction and post-conviction) along our current justice system's trajectory. A number of very specific principles define restorative justice and the values of restoration. The history of restorative justice has deep roots the world over. Many, including Zehr (1996), say the approach is as old as time itself and largely attributable to Indigenous notions of reparation through reconciliation. RJ was first applied in the Canadian Criminal Justice System within a context of the Mennonite approach to conflict resolution in the Elmira (ON) case of the 70s.

While restorative justice is not likely to replace or change our justice system, although some have called for this, it is a good compliment because

FIGURE 2 - RESTORATIVE JUSTICE PROGRAMMES AND THE CRIMINAL JUSTICE SYSTEM
(see source, below)

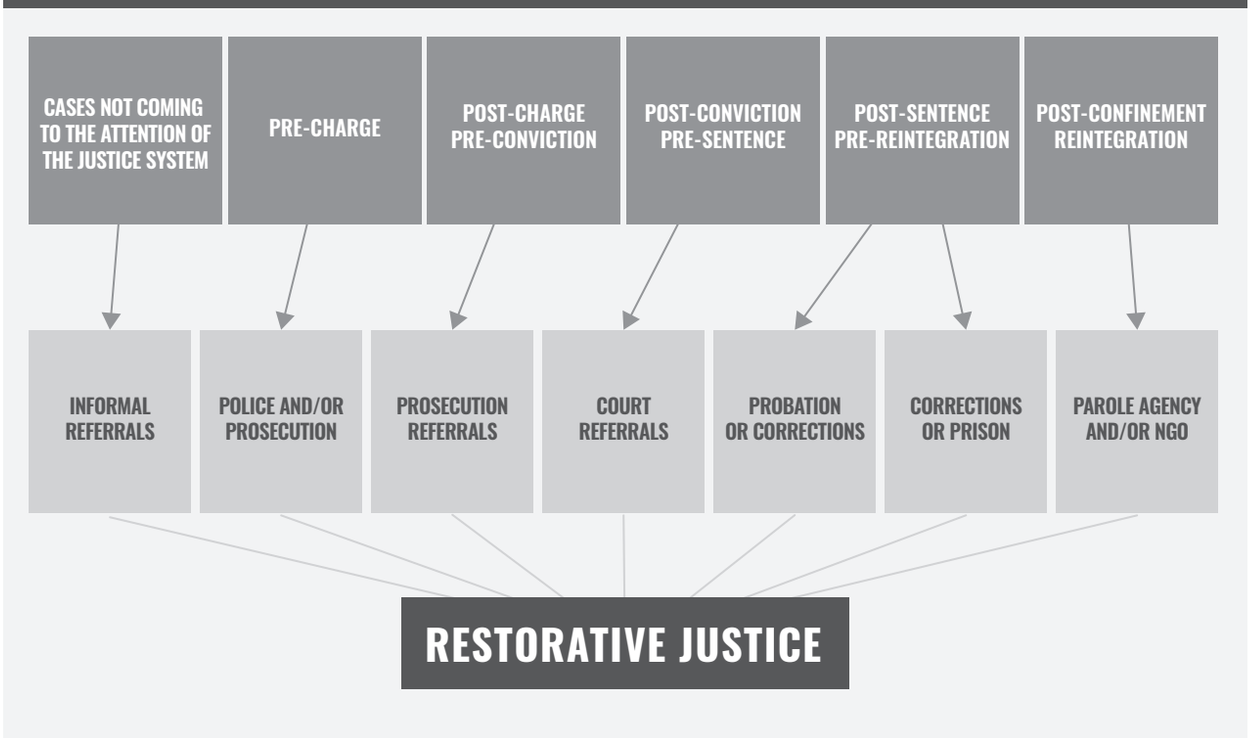

FIGURE 2. Restorative justice programmes and the criminal justice system
SOURCE: Handbook on Restorative Justice. Yvon Dandurand and Curt Tylor Griffiths. (2006). Criminal Justice Handbook Series. Vienna: United Nations Office on Drugs and Crime (UNODC).
Retrieved from https://books.google.ca/books?id=1vx_LiDlPdEC&lpg=PA1&ots=zSksgxDdeG&dq=United%20Nation.%20(2006).%20Handbook%20on%20Restorative%20Justice%20Programmes&lr&pg=PA14#v=onepage&q&f=false

it offers a more holistic approach. The values of restoring relationships, as shown by (among other) the Maori of New Zealand, can aid in crime prevention, and community involvement in the RJ process has been shown to decrease crime rates. By infusing more restorative justice into current retributive/adversarial justice systems, we begin to work towards raising the bar on criminal justice.

After all, true justice entails restoration of all involved: victims, offenders, and community. ■

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RÉSUMÉ

Restorative Justice: History and Principles

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La justice réparatrice est une forme assez récente de justice introduite à Elmira, en Ontario, au Canada, dès 1974, mais elle est présente dans les cultures et l'histoire de nombreux groupes autochtones du monde entier, incluant le peuple maori, en Nouvelle-Zélande. De nombreux théoriciens et chercheurs et systèmes de justice pénale de partout dans le monde ont depuis repris le flambeau. Beaucoup de personnes estiment qu'Howard Zehr a fait progresser la compréhension de la justice réparatrice en comparant les hypothèses et les principes sous-jacents avec la justice rétributive traditionnelle. De nos jours, des options de justice réparatrice existent à toutes les étapes du processus de justice pénale. En intégrant davantage la justice réparatrice aux systèmes actuels de justice rétributive et accusatoire, nous commençons à relever le niveau de la justice pénale.

Restorative Justice Circles

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Restorative justice alternatives to the mainstream adversarial justice system of justice are taking many forms and expressions in contemporary justice systems around the world. In Canada, the three main RJ practices adopted so far are victim-offender mediation, conferencing, and circles (Government of Canada, Department of Justice, 2019; Correctional Service Canada, 2018; Bazemore & Umbreit, 1998). While all three involve open dialogue and mediation between victim and offender and sometimes other stakeholders such as friends, family or community members, the concept of the circle is useful in exploring the holistic nature of RJ and its aim of bringing the victim, offender and the community back into balance following a crime. Three specific forms of restorative circles have been applied within the Canadian CJS : sentencing circles, healing circles, and peacemaking circles, and they have a number of interesting similarities and differences.

ORIGINS OF RESTORATIVE JUSTICE CIRCLES

Restorative circle practices are one of the three main forms and expressions of restorative justice in Canada: victim-offender mediation, conferencing, and circles (Government of Canada, Department of Justice, 2019; Correctional Service Canada, 2018; Bazemore and Umbreit, 1998). The circle model of dispute resolution has a long tradition within Indigenous cultures. Ceremony, symbols and process may vary somewhat within Indigenous cultures, but the goals remain consistent.

The first use of restorative circles within the North American criminal justice setting was in Yukon territory in 1991 (Goldbach, 2016; Hass-Wisecup & Saxon, 2018). Twenty-six-year old Philip Moses was a member of the Na-cho-Ny'ak Dun First Nation and had a significant criminal record of 43 prior convictions (Plett, 1999, p. 8). When Moses appeared in court on subsequent charges related to theft, violating probation and carrying a weapon with intent, Judge Barry Stuart concluded that the typical sentencing practices had proven ineffective for Moses and organized what would become the first sentencing circle (p. 8). The judge invited members of Moses' family, his probation officer, police officers and members of Moses' First Nation community to come together and explore ways to break Moses' chronic cycle of recidivism (p. 9).

As highlighted by Hass-Wisecup & Saxon (2018), the courtroom was rearranged with chairs in a circle to encourage participation and to recognize the shared and equal responsibility participants had in working towards a solution (p. 144). During the circle, participants identified many circumstances that could have contributed to Moses' criminality: – his intellectual challenges (Fetal Alcohol Syndrome) and lack of education, placement "in foster and group homes and finally juvenile centres" from age 10 to 16, exposure to physical and sexual abuse as a child (while in the care of the state), alcohol addiction and unemployment and a lack of suitable resources in the community upon re-entry (Plett, 1999, p. 8). Based on the recommendations of the circle, however, Judge Stuart sentenced Moses to additional probation (suspended sentence) and addiction treatment (p. 9). While Moses did subsequently recidivate, perhaps a similar intervention at an earlier stage of his development (through improved social services) might

have made a difference as the traumas he had experienced emerged during the process.

SOME COMMON FEATURES OF RESTORATIVE CIRCLES

While restorative circles are used for somewhat different purposes (e.g., sentencing, peacemaking and healing), common elements or features can be found in most circle practices. First, all circles rely on ceremonial acts and customs. The forming of a circle symbolizes the act of bringing a community back into relationship in periods of discord, conflict and harm done. It sometimes involves a sacred object in the center of the circle, and each member of the circle shares statements about the value of respecting the circle, the importance of listening and the value of each person in the circle.

Secondly, the circle keeper is acknowledged. Acting as facilitators, a circle keeper often determines whether a particular case is appropriate for a circle. The keeper also identifies and prepares each circle participant. After convening the circle, the keeper facilitates the process and follows up with the circle's participants in relation to individual commitments made to the circle. The third common feature of circles is the talking piece. Most such talking pieces have symbolic meaning to the circle and can be commonplace items such as a stone, feather or wooden object. No one is allowed to speak within the circle unless holding the talking piece. Further, no person can speak out of turn; the talking piece is passed to each member of the circle. The talking piece moves counter clockwise in the circle and goes around more than one time. The symbolic value of the talking piece is crucial as it affirms the importance of listening to others and the inherent equality of the 'Other'.

The fourth shared feature of restorative circles is consensus decision making. Instead of making decisions based on the will of the majority, true consensus decisions are arrived at by considering the needs and opinions of all members of a circle. Important issues and points of disagreement will be continually addressed by the circle until all are unified around a resolution. Although more time consuming than a strictly democratic approach, consensus decision making affirms the equality of all members of the circle and their shared commitment to the circle's aims and decisions.

PEACEMAKING CIRCLES

Peacemaking circles have roots in Aboriginal communities where they have been traditionally used as a method to resolve a conflict (Zehr, 2002; Pranis, Stewart, & Wedge, 2003; Pranis, 2013, p. 117). Peacemaking circles have emerged throughout Canada, as members of the First Nations worked alongside other justice members to build shared responsibilities through processes involving community peacemaking circles (Coates, Umbreit, & Vos, 2003, p. 265). The primary goal of peacemaking circles is to resolve conflict within the community by bringing together members of the public and justice or community workers. As with all restorative practices, the circle is designed to ensure that all the parties can engage in a safe, nonjudgmental environment where each participant has the opportunity to speak if they so choose.

Drawing from inherited Indigenous community-based values and traditions, peacemaking circles go far beyond serving traditional Western notions of criminal justice (Coates, Umbreit, & Vos, 2003, p. 266). Traditional peacemaking circles were and still are used in Indigenous communities as a means of seeking resolution to various sources of disorder and conflict. Peacemaking talking circles may be convened as a forum for community members to discuss and explore an issue or event of joint concern (Sken:nen A'Onsonton – Kahnawà:ke Alternative Dispute Resolution Program, n,d,; Hass-Wisecup & Saxon, 2018, p. 145); for example, when a community is experiencing an increase in homelessness or a school has a concern about online bullying. Talking circles are not primarily focused on solutions but rather on discussing issues of concern and sharing thoughts and perspectives on those issues. Instead of having community issues and concerns prioritized by those outside the circle, talking circles give members the latitude to voice their own concerns. Arriving at a consensus is not a necessary goal of a peacemaking talking circle; instead, the goal is to share the group or community members' concerns (p. 145).

Peacemaking circles now used within the criminal justice context are frequently convened in response to recidivism (Coates, Umbreit, & Vos, 2003, p. 266). The circle brings the victim of a crime and supporters, offender and supporters, judge, lawyers including prosecution and defense counsel, police officers, court workers, and other community

members together in a controlled environment (Pranis, 2013, p. 118). These circles are designed to allow all members to express their concerns while understanding the events of the crime in attempts to prevent further victimization within the circle (p. 118). Peacemaking circles involve a very intricate preparation process (p. 118) and must include support for both the victim and the offender (p. 118).

In a peacemaking circle, a centerpiece sits in the middle of the circle as a symbol of the purpose of gathering. A variety of items may be used, such as candles, statutes, and other culturally appropriate objects. The objects in the centerpiece become a reminder of why everyone is gathered in the circle and what they are trying to accomplish. Peacemaking circles tend to be emotionally draining, and the centerpiece also serves as a resting place for each participants' eyes. Once the peacemaking circle begins, the leaders ask the participants to write down some of their values on a piece of paper. Each person can then voluntarily participate by adding their values (paper) to the centerpiece. This is done to ensure everyone feels included, heard and comfortable discussing the events.

The peacemaking circle works towards a consensus on the most appropriate resolution of the harm that brought the circle together. While each circle arrives at its own consensus, resolutions can include formal apologies by the offender to community service. Formal acts of forgiveness of the offender are also common.

HEALING CIRCLES

Healing circles is also a somewhat self-explanatory term, in the sense that they promote healing after a harm (often crime) has taken place. They are private events in which the healer determines who may be present in the circle (Pranis, 2013, p. 119). The healing circle is a preparation step for the peacemaking circle process (p. 118). Healing circles foster an environment based on mutual respect, confidentiality, commitment, and an open attitude towards hearing another's pain and understanding its effect (p. 119). A prayer or reflection is said as a means of beginning and ending the healing circle (p. 119). A talking piece is used, allowing only the individual holding the piece to speak (p. 119). This allows everyone to express their feelings without being interrupted (p. 119). The talking piece assists in creating a sense of equality among all members.

A healing circle formed around a victim is done so with the purpose of validating the victim's feelings and supporting them (p. 119). The community provides this reassurance and offers support for the victim in dealing with the harm caused (p. 119). Healing circles for the offender involves acknowledging the damage that resulted from their actions and identifying any underlying issues that may have contributed to the offense (p. 119). The healing circle works at re-incorporating the offender into the community and creating a meaningful sentencing plan (p. 119). The community works with both victim and offender to identify the needs.

SENTENCING CIRCLES

Sentencing circles allow members of the community to contribute in determining the most meaningful and restorative sentence possible for an offender. Traditional criminal courts focus primarily on the crime and the accused/offender and resolving that particular form of conflict through court-sanctioned punishment (United Nations Office on Drugs and Crime, 2006, p. 24). With sentencing circles, however, the criminal offense is viewed as a small portion of the conflict (p. 24). Circle sentencing is an illustrative form of participatory justice by allowing individuals from the community to become involved in the restorative justice process through participation in organizations such as Community Justice Committees (p. 23). Such Committees are formed of community members who wish to address conflict in an effective manner. According to a restorative justice handbook published by the United Nations Office on Drugs and Crime (2006), sentencing circles have four main stages and Community Justice Committees are present throughout (p. 23).

The first stage requires deciding if the particular case is appropriate for a circle procedure. The second stage involves meeting with parties to prepare them. Convening the sentencing circle and searching for a consensual decision comprises the third stage. It is within this stage that circle participants identify the harm done by the offender's actions as well as contribute to a consensus on what the appropriate community response should be. The fourth and final stage involves measures taken to follow up with the offender to ensure success. Once a sentence is suggested and agreed upon, it is presented to the judge to take into account when sentencing the offender (p. 23).

Circle sentencing reveals how the standards of restorative justice can be initiated within a holistic framework while establishing a balance of powers between the criminal justice system and the community (p. 23). This balance of powers is enhanced through the democratic use of consensus (Pranis, 2013, p. 120). Through this, all members are given a voice (p. 120). Sentencing circles have shown to build community through the tedious process of working through crime and victimization, ultimately establishing respectful relationships (p. 120).

SOME DIFFERENCES BETWEEN THE COURT PROCESS AND RESTORATIVE JUSTICE CIRCLES

In criminal matters, society is always looking for justice to be served through punishment of the offender. Punitive measures may be beneficial in some cases, but in others may lead to future harm. In traditional criminal courts, sentencing is usually the main focus, but the sentencing aspect in circles is just a small part of repairing the damage (United Nations Office on Drugs and Crime, 2006, p. 24). In the traditional court process, the majority of the time, the main focus is on the offender's past conduct. In circles, the focus on past conduct is related to the person's future conduct (p. 24). Looking at the past is essential as it allows the offender to work on changing their behavior.

CONCLUSION

The traditional criminal court system has a history of silencing victims' concerns. Victims often need restoration and restorative circles offer a fair process that affords equality to both victim and offender (Strang, 2013, p. 341). Restorative circles (peacemaking, healing, and sentencing) can have a lasting impact on offenders - something the traditional court system struggles to do (Pranis, 2013, p. 120). The circle process creates ties between community and offender that can facilitate a more meaningful and restorative administration of justice (p. 120). This connection and understanding allows community to support offenders in adhering to their agreements and taking ownership of their actions and the harm caused (p. 121). Restorative practices such as circles also provide the opportunity for victims and communities to address and move beyond the harm caused to each by the offender and also can involve recommendations for social assistance or education measures that may help prevent future conflict. ■

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RÉSUMÉ

Restorative Justice Circles

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Les options de justice réparatrice comme solutions de rechange au système de justice accusatoire traditionnel prennent différentes formes et expressions dans les systèmes contemporains de justice partout dans le monde. Au Canada, les trois principales méthodes de justice réparatrice adoptées jusqu'ici sont la médiation entre victime et délinquant, les conférences et les cercles (gouvernement du Canada, ministère de la Justice, 2019; Service correctionnel du Canada, 2018; Bazemore et Umbreit, 1998). Les trois utilisent la discussion ouverte et la médiation entre la victime et le contrevenant, et parfois des intervenants tels que les amis, la famille ou des membres de la communauté, mais le concept de cercle est utile pour explorer la nature holistique de la justice réparatrice et son objectif d'amener la victime, le contrevenant et la communauté à retrouver l'équilibre après un crime. Trois formes précises de cercles de réconciliation ont été appliquées dans le système de justice pénale du Canada, soit les cercles de détermination de la peine, les cercles de guérison et les cercles de conciliation, et elles présentent toutes des similarités et des différences intéressantes.

Teaching Restorative Justice

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After over a decade hiatus, the Restorative Justice (RJ) option course in the Bachelor of Arts – Criminal Justice degree at Mount Royal University was relaunched in the 2019 winter term. Student interest was immediate, and enrollment quickly reached full capacity. The relaunch proved to be a significant task as curriculum and course resources had to be revisited and refreshed, but the rewards in developing and teaching an undergraduate restorative justice course made it worthwhile. Developing and teaching this undergraduate course was a uniquely rewarding experience. If MRU students are an example, it seems that many future criminal justice practitioners are keenly interested in what RJ is (and isn't) and how it works (or doesn't). Restorative justice practitioners demonstrated unbridled enthusiasm, eager to come in to share their experiences and passion and to reinforce student learning. A number of interesting challenges in delivering an undergraduate restorative justice course also arose, such as helping students to understand restorative justice's redefinition of harm and the tenuous theoretical explanations on why restorative justice works (or not). Yet, perhaps the most unexpected challenge was reconciling the strong emotional response this course of study triggered - in both students and teacher.
We thank the Canadian Criminal Justice Association (CCJA) for this wonderful opportunity to showcase some undergraduate-student learning in restorative justice.

Teaching an undergraduate course on restorative justice presents some unique opportunities and challenges, as does the state of restorative justice practice within our current criminal justice system. A quick review will likely be of interest to all criminology/criminal justice students, practitioners, academics and government officials.

RJ AND LEARNING OPPORTUNITIES

Based on the experience at Mount Royal University, there is significant student interest in learning more about restorative justice (RJ). It is an important opportunity, as most undergrad criminal justice graduates aspire to become criminal justice practitioners in the immediate future. Even more relevant is the fact that student interest is triggered by a recognition that our current criminal justice system struggles with recidivism rates among segments of offender populations, overrepresentation of Indigenous people, costs of incarceration, implementing research-based initiatives that advance Canadian criminal justice, and a myriad of issues related to the rights and needs of victims/survivors of crime. Although more systematic research is needed on the effectiveness of restorative justice programs, some evidence shows that recidivism rates for offenders in restorative justice programs are lower than for other offenders (Public Safety Canada, 2006). Further, Evans, McDonald and Gill (2018) estimate that victim and survivor satisfaction with restorative justice can be higher.

At MRU, the RJ teaching/learning opportunity is enhanced by the enthusiasm and willingness of restorative justice practitioners to participate in student learning. There is great diversity in restorative justice programs across Canada in terms of approaches, victim/offender/community involvement and program participants (Government of Canada, Department of Justice, 2018). Despite other demands on their time, practitioners welcomed the opportunity to come into the classroom to present information and respond to questions about their respective programs. Some of the more impactful student

learning experiences unfolded through mock restorative justice activities conducted in the classroom by practitioners. By way of an example, a representative of the John Howard Society of Red Deer's Restorative Actions and Practices Program (RAPP) drove two hours to conduct a mock peacemaking circle in the MRU course, with the students playing offenders, victims, community members and representatives of the justice system. This level of professional engagement is rare and constitutes a wonderful teaching/learning opportunity.

One final opportunity worth noting is the impact such courses may have on the trajectory of the Canadian CJS. There seems to be a renewed international thirst to explore the link between restorative justice practices and academic contributions (i.e. theory) and document the range of restorative justice practices as a means of gathering information on "what works" and what doesn't (United Nations Office of Drugs and Crime, 2006, pp. 81-88). This type of research-based approach to existing and future restorative justice initiatives offers a solid foundation for RJ that will garner public support and sustainable funding.

This teaching/learning opportunity helped reinforce student capacities for remembering, understanding, applying, analyzing, and evaluating concepts and available programs in restorative justice. This satisfies four of the five learning domains identified in Benjamin Bloom's frequently cited taxonomy of learning (Armstrong, 2009). Teaching restorative justice to an undergraduate audience also constitutes a launch point for the continued growth of restorative justice in Canada. Creating restorative justice opportunities will satisfy Bloom's fifth learning domain – creation.

RJ AND TEACHING CHALLENGES

Teaching restorative justice in an undergraduate context does have its challenges. Some of these are a matter of course, but others might be surprising to both teacher and learner. Developing student comprehension of how restorative justice redefines the concept of harm might be the central challenge. Most students find it hard to see beyond the mainstream understanding, that crime is primarily a violation of a criminal law and considered an act against the state. Restorative justice's premise, on the contrary, is that crime inflicts physical/material harm, emotional/psychological harm and social harm (Strang and Sherman, 2010, pp. 36-61). This complex notion requires continual reinforcement to become a meaningful part of student knowledge. The goal is to encourage students to see victims, offenders and communities not as the objects of a crime event but the subjects of a conflict.

Another challenge in teaching restorative justice extends from the tenuous link between the philosophical underpinnings of the restorative justice paradigm and restorative justice theory. There also seems to be a need for scientific explanations of why the practice of restorative justice works in some instances but not in others (Van Ness and Heetderks Strong, 1997, pp. 25-29). Much of the work of early proponents of restorative justice in North America focuses on exploring the differences between restorative justice and retributive justice in terms of values, principles and assumptions. For example, Howard Zehr's *Changing Lens* (1990) and *Little Book on Restorative Justice* (2002), the many articles and books by Daniel W. Ness (1997), and various publications authored by Gordon Bazemore (1998) and Mark Umbreit (1994). Many recall Nils Christie's important article *Conflict as Property* (1977) or John Braithwaite's book *Crime, Shame and Reintegration* (1989) as a theoretical foundation. There have also been recent attempts, such as by Amy Levad (2012) or David O'Mahony and Jonathan Doak (2010), to fill a perceived theoretical gap in restorative justice.

As discussed in several of the student articles in this edition of the *Justice Report*, it can also be challenging to pin down the essential aspects of restorative justice. Determining if a program or practice is "restorative justice heavy" or "restorative justice light" poses a challenge. Many proponents of restorative justice believe that participation cannot be mandated but must be voluntary (United Nations Office of Drugs and Crime, 2006, p. 33). Certain restorative justice programs focus on the victim-offender dynamic with little or no community involvement (United Nations Office of Drugs and Crime, 2006, p. 16). Some advocates contend that restorative justice is primarily a reactive model (Van Ness and Heetderks Strong, 1997, pp. 36-41) and there are also those who argue it can be linked to proactive criminal justice responses such as community policing (Hoyle, 2010) and used in non-criminal justice situations

such as school bullying (Hass-Wisecupp and Saxon, 2018, pp. 261-285).

The search for theoretical foundations and disagreements regarding the essential elements of restorative justice are thus magnified by the need to move beyond antidotal evidence of the effectiveness of restorative justice to more systematic results-based evidence. Undergraduate students want to know how to measure the effectiveness of restorative justice and if it produces sustainable and measurable improvements in recidivism and victim and survivor satisfaction. The relative absence of substantial comprehensive texts for an undergraduate audience also makes teaching restorative justice challenging.

Perhaps surprisingly, another teaching challenge comes from the intensity the topic of restorative justice can evoke. Given the passion and commitment many bring to the practice of restorative justice, it is easy for students and teachers alike to get swept up in practitioners' enthusiasm and advocacy. This intensity may trigger emotional responses that can override both the teaching and learning of restorative justice. It is worth noting, however, that undergraduate students are not inclined to be dismissive of restorative justice or view it as incompatible with other current practices of the Canadian criminal justice system. Perhaps this non-judgemental starting point and the shortcomings of the retributive system are behind the emotional responses some students may have to restorative justice.

A PERSONAL COMMENT

It gives me enormous pride that six of the articles in this special edition of the *Justice Report* are the product of undergraduate student research from Mount Royal University's CRJS 2019 (Restorative Justice) course in Winter, 2019. The opportunity extended by the Canadian Criminal Justice Association (CCJA) to showcase student research by undergrads in its national publication is both unique and generous. Special recognition must go to my colleague Dr. John Winterdyk for his support from the start of this initiative. As the instructor for CRJS 2019, I am gratified that our student authors embraced the opportunity and worked diligently to create this edition of CCJA's *Justice Report*. On behalf of our student authors, special thanks must also go to Ms. Wright for her enthusiastic support throughout the editing process. ■

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RÉSUMÉ

Teaching Restorative Justice

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Après une interruption de 10 ans, le cours optionnel intitulé Justice réparatrice, du baccalauréat ès arts à Mount Royal University — justice pénale, a été relancé au trimestre d'hiver 2019. L'intérêt des étudiants a immédiatement été suscité, et le nombre d'inscriptions a rapidement atteint la limite. La relance s'est avérée une lourde tâche puisqu'on a dû revoir et actualiser le programme d'études et les ressources du cours. Cependant, les avantages de l'élaboration et de l'enseignement d'un cours de premier cycle en justice réparatrice en valaient la peine. L'élaboration et l'enseignement de ce cours de premier cycle se sont avérés une expérience particulièrement enrichissante. Si les étudiants de l'Université Mount Royal sont un exemple, il semble que de nombreux futurs intervenants du système de justice pénale s'intéressent vivement à ce qu'est la justice réparatrice (et ce qu'elle n'est pas) et aux résultats qu'elle donne (ou ne donne pas). Les intervenants en justice réparatrice ont exprimé un enthousiasme débordant, prêts à venir échanger leurs expériences et leur passion et à renforcer l'apprentissage des étudiants. Des défis intéressants ont également surgi dans l'enseignement d'un cours de premier cycle en justice réparatrice, notamment aider les étudiants à comprendre la redéfinition du terme « tort causé » dans le contexte de la justice réparatrice et les explications théoriques vagues de la raison pour laquelle la justice réparatrice donne des résultats (ou non). Mais, le défi peut-être le plus inattendu a été de concilier la réaction émotionnelle que ce cours a suscitée — tant chez les étudiants que chez le professeur. Nous remercions l'Association canadienne de justice pénale (ACJP) de cette occasion extraordinaire de mettre en valeur un exemple d'études de premier cycle en justice réparatrice.

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INTERNATIONAL CONFERENCE ON CRIMINAL LAW, JUSTICE AND CRIME (ICHTSE)
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JUNE 25-27 JUIN 2020
11TH INTERNATIONAL EUROPEAN FORUM FOR RESTORATIVE JUSTICE CONFERENCE
THEME - THÈME * Justice Beyond Borders: Restorative connections through space and language
PLACE - ENDROIT * Sassari, Italy
INFORMATION * www.euforumrj.org/en/events

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IRVING KULIK
Executive Director of the Canadian Criminal Justice Association
Directeur général de l'Association canadienne de justice pénale

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